

**74829**

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1                   REPORTER'S RECORD

2                   VOLUME 50 OF 84 VOLUMES

3                   TRIAL COURT CAUSE NO. 20020D00230

4                   COURT OF CRIMINAL APPEALS NO. AP-74,829

5  
6       THE STATE OF TEXAS                           )     IN THE DISTRICT COURT  
7       v.    )     )  
8       DAVID RENTERÍA                              )     OF EL PASO COUNTY, TEXAS  
  )  
  )     41ST JUDICIAL DISTRICT

9  
10  
11                   TRIAL ON THE MERITS - MORNING SESSION    FILED IN  
12   COURT OF CRIMINAL APPEALS

13    JUN 04 2009

14    *Louise Pearson, Clerk*

15                   On Tuesday, the 22nd day of April 2008, the  
16                   following proceedings came on to be heard in the above-entitled  
17                   and numbered cause before the **Honorable Mary Anne Bramblett**,  
18                   Judge of the 41st Judicial District Court in El Paso County,  
19                   Texas.

20                   Proceedings reported by computer-aided machine  
21                   shorthand.

22  
23  
24  
25    **ORIGINAL**

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1                   **VOLUME 50**

2                   **CHRONOLOGICAL INDEX**

3                   **TRIAL ON THE MERITS- MORNING SESSION**

	<u>Tuesday, April 22, 2008</u>	<u>PAGE</u>	<u>VOL.</u>
5	Hearing on 11.07 Writ	4	50
	Discussions on Motions in Limine	6	50
6	Roll Call of Jury	11	50
7	Jury Sworn by the Court	13	50
	Jury Instructed by the Court	13	50
8	Opening Statement by Mr. Esparza	20	50
9	Opening Statement by Mr. G��ndara	25	50

	<b>STATE'S WITNESSES</b>	<b>DIRECT</b>	<b>CROSS</b>	<b>VOIR DIRE</b>	<b>VOL.</b>
11	Douglass Lloyd	30	--		50
	Tom Monday	36	74		50
12	Bruce Orndorf	77	--		50
13	Court Reporter's Certificate				93      50

14                   **ALPHABETICAL WITNESS INDEX**

	<b>DIRECT</b>	<b>CROSS</b>	<b>VOIR DIRE</b>	<b>VOL.</b>
17	Lloyd, Douglass	30	--	50
	Monday, Tom	36	74	50
18	Orndorf, Bruce	77	--	50

19                   **EXHIBIT INDEX**

	<b>STATE'S</b>	<b>OFFERED</b>	<b>ADMITTED</b>	<b>VOL.</b>
	<b>NO. DESCRIPTION</b>			
22	1A Waiver	34	34	50
23	2A Plastic Bag	63	64	50
24	2B Photo	68	68	50
25	5 Photo	66	66	50

Tuesday, April 22, 2008.

(Defendant present, no Jury.)

THE COURT: This is cause number 20020D00230, the State of Texas v. David Rentería. We are scheduled for a jury trial on the resentencing of this case today.

Mr. Louis López has an 11.07 writ that had been pending on behalf of the Defendant, and I have you and Mr. Darnold here from the district attorney's office. If you wish to address anything this morning before we start trial.

MR. LÓPEZ: Yes, Your Honor. Since -- this is Louis López on behalf of Mr. Rentería. I'm his 11.071 writ of habeas corpus attorney. Since they are my motions, I will go first. However, I think this Court will be able to make -- decide what it needs to do without Mr. Darnold having to add anything, but I do encourage Mr. Darnold to add if he wishes.

As Mr. G ndara pointed out to me, St. James once said, if you have no faith, proceed like you do have faith. And I think that's the situation where we're in now. I am his writ attorney, appointed to represent him on his original writ of habeas after he received his first death sentence. When the case was taken up on appeal, the Texas Court of Criminal Appeals reversed the sentencing and sent it back and here we are.

However, Mr. Darnold called up to the Court and had asked, well, what happens to the writ? Is it still pending or is the writ moot? The Court said, well, it's still pending,

1 and so when -- if he gets sentenced to death again, then we'll  
2 see what we do next. Unfortunately, this procedure in which the  
3 Texas Court of Criminal Appeals is proceeding under the writs is  
4 not under the 11.071. There's no guideline for where we stand  
5 right now.

6 I'm in a situation where I am in existence, but  
7 I'm not in existence. Because Mr. Rentería has not been  
8 sentenced to death, technically, I have no standing to be in  
9 front of the Court asking you to do anything on his writ because  
10 he has not been given the death penalty. And only when you're  
11 given the death penalty does your 11.071 rights come into play.  
12 If, after the close of all the evidence, if the Jury gives him  
13 life, I will not -- there will be no need for me in this case.  
14 And so we're stuck in a situation as to, well, can you  
15 procedurally hear my motions if I don't technically exist, or can  
16 you hear my motions because technically I do exist because the  
17 writ is still pending?

18 So Mr. Darnold and I believe that the proper --  
19 well, I'm not going to agree that this is the proper way, but I  
20 think the Court's only ruling is to deny me standing because  
21 technically, he does not have 11.071 rights. Of course, I'm  
22 alleging that I do have standing because his writ is still  
23 pending, but that's a decision you're going to have to make.

24 THE COURT: Mr. Darnold, is there anything you  
25 wish to place on the record?

1                   MR. DARNOLD: Not too much, Your Honor. Just, I  
2 think any filings under 11.071 are premature since there is no  
3 death sentence in this case as of yet.

4                   THE COURT: All right. I will deny your motions  
5 that you do have pending, that I have seen that have been filed  
6 regarding your writ because it is probably a premature request  
7 for rulings by me in this case.

8                   MR. LOPEZ: Your Honor, just for record purposes,  
9 we do object to your ruling.

10                  THE COURT: It's in the record.

11                  MR. LÓPEZ: Thank you, Your Honor. May I be  
12 excused?

13                  THE COURT: Yes, you may. Thank you.

14                  MR. DARNOLD: Thank you, Your Honor.

15                  THE COURT: Mr. Darnold, thank you.

16                  Before we bring the Jury in there were some items  
17 that the Court was going to rule on regarding the motion in  
18 limine. On number 5 the Court is going to grant the motion in  
19 limine as to fact witnesses without personal knowledge, but the  
20 Court is going to deny that motion in limine regarding experts or  
21 lay witnesses with personal knowledge.

22                  I've even written on here to refresh my memory if  
23 the issue comes up.

24                  Anything else before we bring the Jury in?

25                  MR. GANDARA: Ms. Hughes has an issue she wishes

1 to present to the Court in limine.

2 MS. HUGHES: There was one more issue, Judge. In  
3 regards to the evidence in this case, as we've discussed  
4 repeatedly, the evidence admitted during the guilt phase is  
5 admitted and is still part of the record and we anticipate that  
6 we will have additional exhibits and the Defense would have  
7 additional exhibits, as well. We would like to ask for a motion  
8 in limine regarding discussion along these lines: Well, the  
9 first jury didn't hear this evidence and so we're asking you to  
10 consider this. They didn't hear this in considering whether he  
11 was guilty or not, but you can consider it now as to his  
12 sentence, or -- I don't think that that is relevant and we would  
13 ask that there be a motion in limine granted as to going into any  
14 of that type of discussion or argument on opening or questioning  
15 or closing.

16 THE COURT: Any response?

17 MR. GANDARA: Your Honor, as the Court is acutely  
18 aware, we filed a series of motions for new trial which we allege  
19 that there was *Brady* material that was not disclosed to the  
20 Defendant at the first trial -- before the first trial in time to  
21 use it, and that's evidence that the first jury did not hear.  
22 There is information that was presented to the first jury in a  
23 different light than it's going to be presented this time around,  
24 and that's information that the first jury did not hear. And it  
25 all goes to circumstances of the offense, and it's evidence that

1 is relevant and admissible. And so in terms of whether this Jury  
2 considers it or not, as a factor that the first jury did not hear  
3 I think could be critical to their assessment of that in terms of  
4 their determination of the punishment in this case.

5 THE COURT: The Court will grant the motion in  
6 limine regarding discussing it as not having been heard by the  
7 first jury. I'm not saying that that evidence is not admissible.  
8 I'm just saying that you're not allowed to comment on it in that  
9 vein.

10 Anything further?

11 MS. HUGHES: No, ma'am. Thank you.

12 THE COURT: All right. Let's bring the Jury in.

13 MR. GANDARA: Your Honor, before the Jury comes  
14 in, before the Jury is seated, we filed various objections to the  
15 manner of conduct of the voir dire. And we filed a motion for  
16 mistrial and made oral motions for mistrial based on what we  
17 perceive to be impermissible and incorrect restrictions on our  
18 right to voir dire the panelists in this case. And at this time  
19 before the Court seats the Jury, we object to seating this Jury.  
20 We ask for a mistrial on the grounds that we were not permitted  
21 to do a full and fair voir dire in jury selection in this case.

22 THE COURT: Did you present these -- the motion  
23 for mistrial to Judge Alcalá, who was the judge appointed to do  
24 the jury selection?

25 MR. GANDARA: Yes, Your Honor. We did present it

1 during the course of the jury selection, but not at the point  
2 when we had completed the jury, the selection of the 14.

3 THE COURT: Motion for mistrial is denied.

4 MR. GANDARA: Your Honor, I'm reminded as a  
5 procedural requisite I'll have to renew this motion after the  
6 jurors are sworn, and I would like to do it out of the presence  
7 of the Jury.

8 THE COURT: All right. Well, then you will be  
9 able to come up here afterwards and just put it in the  
10 microphone.

11 MR. ESPARZA: Your Honor, I wanted to make the  
12 Court aware that Mrs. Flores is in the courtroom for opening.  
13 She won't be here during the presentation of the evidence. But I  
14 thought -- just to make sure that the Court is aware of that. I  
15 don't think that's in violation of any rule of evidence.

16 MR. GÁNDARA: I have no objection.

17 THE COURT: All right.

18 MR. ESPARZA: Just to the three witnesses --  
19 actually, the first four witnesses. Three of them are police  
20 officers, one is Dr. Contín. How do we want to proceed? Do you  
21 want to voir dire them now? How do you want to proceed after  
22 opening? What do you want to do?

23 MR. GANDARA: We don't have any voir dire of the  
24 police officers or of Dr. Contín.

25 MR. ESPARZA: One of them is the fingerprint guy,

1 Monday, Orndorff, and -- Lloyd, Monday, Orndorff, and Contín.

2 MR. GANDARA: We don't have any voir dire for  
3 them.

4 THE COURT: Are you going to need the podium?

5 MR. GANDARA: For opening I can go with or without  
6 it.

7 MR. ESPARZA: Your Honor, I prefer to use the  
8 podium. Or would you like me to move it?

9 THE COURT: I have a young Bailiff for it.

10 Ready?

11 MR. ESPARZA: I'm ready, Your Honor.

12 THE COURT: Bring them in.

13 (Jury in, Defendant present, 9:20 a.m.)

14 THE COURT: Good morning, Ladies and Gentlemen.

15 MEMBERS OF JURY: Good morning.

16 THE COURT: You can say good morning to me.

17 MEMBERS OF JURY: Good morning.

18 THE COURT: Good. Good. That's probably about  
19 all you can say to any of us as you'll find out from the  
20 instructions you're going to get. But the first thing that we do  
21 need to do, since it's been a while since we've seen you, I need  
22 to have the Clerk do a roll call to make sure we have the correct  
23 person sitting in the correct seat.

24 Proceed.

25 THE CLERK: I'll now call roll. Please answer

1 "here." Donnie Malpass.  
2 THE JUROR: Here.  
3 THE CLERK: Joaquin Rivera.  
4 THE JUROR: Here.  
5 THE CLERK: John Harton.  
6 THE JUROR: Here.  
7 THE CLERK: Norman Thomas.  
8 THE JUROR: Here.  
9 THE CLERK: Brett Williams.  
10 THE JUROR: Here.  
11 THE CLERK: Roxanne Castricone.  
12 THE JUROR: Here.  
13 THE CLERK: Robert Micaletti.  
14 THE JUROR: Here.  
15 THE CLERK: Ellen Bradley.  
16 THE JUROR: Here.  
17 THE CLERK: Chester Dowling.  
18 THE JUROR: Here.  
19 THE CLERK: Robert Martínez.  
20 THE JUROR: Here.  
21 THE CLERK: Washington Watley.  
22 THE JUROR: Here.  
23 THE CLERK: Jeanette Sánchez.  
24 THE JUROR: Here.  
25 THE CLERK: Sandra Heimer.

1 THE WITNESS: Here.

2 THE CLERK: Fernando Soliz.

3 THE JUROR: Here.

4 THE CLERK: The Jury has been properly seated,  
5 Your Honor.

6 THE COURT: Thank you very much. Again, good  
7 morning, Ladies and Gentlemen of the Jury. The first thing I  
8 would like to do is I would like to thank you very much for your  
9 time that you have already given to us, the time that you are  
10 going to be giving to us these next couple of weeks, and I do  
11 want to thank you very much for your patience. You all have made  
12 this a much easier process for all of us that are involved in it,  
13 so I'm appreciative. I know the attorneys are, as well.

14 You are called upon to decide the punishment of  
15 the Defendant in this case. As you have already been informed  
16 during the voir dire process, the Defendant has previously been  
17 found guilty of capital murder, and the matter of punishment is  
18 now referred to you. Your duty as jurors will be to decide the  
19 disputed facts. It is the duty of the Judge to see that the case  
20 is tried in accordance with the rules of law. In this case, as  
21 in all cases, the actions of the Judge, parties, witnesses,  
22 attorneys, and jurors must be according to law. Texas law  
23 permits proof of any violation of the rules of proper jury  
24 conduct. By this I mean that jurors and others may be called  
25 upon to testify in open court about any acts of jury misconduct.

1                   I instruct you therefore, to carefully follow all  
2 of the instructions which I'm now going to give to you, as well  
3 as all others that you may receive while this case is on trial.

4                   Please raise your right hands.

5                   (Jury duly sworn by Court.)

6                   THE COURT: Counsel, for the record.

7                   (At the bench, on the record.)

8                   MR. GÁNDARA: Your Honor, I would respectfully  
9 object to the seating of the Jury on the grounds that we were not  
10 given a full and fair opportunity to voir dire the members of the  
11 jury panel in this case, and on the additional grounds that were  
12 stated during the voir dire as the case went on. We object to  
13 the seating of this Jury.

14                  THE COURT: Denied.

15                  (Open court, Jury hearing.)

16                  THE COURT: By the oath which you take as jurors  
17 you have now become officials of this Court and active  
18 participants in the public administration of justice.

19                  I'm now required to give you further instructions  
20 which you must obey throughout this trial. It is your duty to  
21 listen to and to consider the evidence and to determine fact  
22 issues later submitted to you, but I, as a judge, must decide  
23 matters of law.

24                  I have given you a handout of your instructions  
25 that I'm going to read to you. You may follow along. You are

1 also allowed to keep those instructions. If you have any  
2 questions about your responsibilities as a juror, it should be  
3 answered there. If not, you may ask the Bailiff about it. Do  
4 not ask the Bailiff anything about the case; only about your  
5 responsibility regarding your conduct as a juror.

6                   Do not mingle with nor talk to the lawyers,  
7 witnesses, parties, or any other person who might be connected  
8 with or interested in this case, except for casual greetings.  
9 They have to follow these same instructions and you will  
10 understand it when they do.

11                  Do not accept from nor give to any of those  
12 persons any favors, however slight, such as rides, food, or  
13 refreshments.

14                  Do not discuss anything about this case or even  
15 mention it to anyone whomsoever, including your spouse, nor  
16 permit anyone to mention it in your hearing until you are  
17 discharged as jurors or excused from this case. If anyone  
18 attempts to discuss this case with you, please report it to me at  
19 once. Do not even discuss this case among yourselves until after  
20 you have heard all of the evidence, the Court's charge, the  
21 attorneys' arguments, and until I have sent you to the jury room  
22 to consider your verdict.

23                  Do not make any investigation about the facts of  
24 this case. Occasionally we have a juror who privately seeks out  
25 information about a case on trial. This is improper. All

1 evidence must be presented in open court so that each side may  
2 question the witnesses and make proper objections. This avoids a  
3 trial based upon secret evidence. These rulings apply to jurors  
4 the same as they apply to the parties and to me. If you know of  
5 or learn anything about this case except from the evidence  
6 admitted during the course of this trial, you should tell me  
7 about it at once.

8                   You have just taken an oath that you will render a  
9 verdict based upon the evidence submitted to you under my  
10 rulings.

11                  Do not make personal inspections, observations,  
12 investigations, or experiments, nor personally view premises,  
13 things, or articles not produced in court. Do not let anyone  
14 else do any of these things for you. Do not tell other jurors  
15 your own personal experiences nor those of other persons nor  
16 relate any special information. A juror may have special  
17 knowledge of matters such as business, technical, or professional  
18 matters, or may have expert knowledge or opinions, or may know  
19 what happened in this or some other lawsuit. To tell the other  
20 jurors any of this information is a violation of these  
21 instructions.

22                  Do not seek information contained in law books,  
23 dictionaries, public or private records or elsewhere which is not  
24 admitted into evidence.

25                  At the conclusion of all the evidence I will

1 submit to you a written charge. Since you will need to consider  
2 all of the evidence presented by me -- all of the evidence  
3 admitted by me, it's important that you pay close attention to  
4 the evidence as it is presented. Any violation of these rules  
5 should be reported to me at once.

6                   I'll tell you how this case will proceed. The  
7 State will make an opening statement outlining its case. The  
8 Defendant's attorney may also make an opening statement at that  
9 time. After the opening statement, the State will introduce  
10 evidence. At the conclusion of the State's evidence, the  
11 Defendant has the right to introduce evidence; however, he  
12 need not do so. At the conclusion of all the evidence, I will  
13 read to you the charge which contains the law that applies to  
14 this case, and then the attorneys will make their closing  
15 arguments to you.

16                   Opening statements and closing arguments of the  
17 attorneys are intended to help you in understanding the evidence  
18 and applying the law, but they are not evidence. In other words,  
19 anything the attorneys say in this courtroom is not evidence.  
20 The evidence which you are to consider consists of the testimony  
21 of the witnesses and the exhibits admitted into evidence.

22                   The admission of evidence in court is governed by  
23 rules of law. From time to time it may be the duty of the  
24 attorneys to make objections, and my duty as judge is to rule on  
25 those objections and determine whether or not you can consider

1 certain evidence. You must not concern yourself with the  
2 objections or my reasons for these rulings. You must not  
3 consider testimony or exhibits to which an objection has been  
4 sustained or which has been ordered stricken. It is your duty to  
5 determine the facts and to determine them from the evidence and  
6 the reasonable inferences arising from such evidence, but you  
7 must not indulge in guesswork or speculation.

8 No statement or ruling or remark that I may make  
9 during the presentation of testimony is intended to indicate my  
10 opinion as to the facts. You are to determine the facts. In  
11 this determination you alone must decide upon the believability  
12 of the evidence and its weight and its value. In considering the  
13 weight and value of the testimony of the witness, you may take  
14 into consideration the appearance, attitude, and behavior of the  
15 witness, the interest of the witness in the outcome of the case,  
16 the inclination of a witness to speak truthfully or not, and all  
17 other facts and circumstances in evidence. Thus, you may give  
18 the testimony of any witness just such weight and value as you  
19 may believe that testimony is entitled to receive.

20 You must not be influenced in any degree by any  
21 personal feeling of sympathy for or prejudice against either the  
22 State or the Defendant, for each is entitled to the same fair and  
23 impartial consideration. Until this case is submitted to you for  
24 your deliberation, you must not discuss this case with anyone or  
25 remain within the hearing of anyone discussing it. You are not

1 allowed to read any newspaper article, listen to any radio  
2 broadcast, nor view any television program that will discuss this  
3 case.

4 After this case has been submitted to you, you  
5 must discuss this case only in the jury room and when all members  
6 of the Jury are present. You are to keep an open mind and you  
7 must not decide any issue in this case until it is submitted to  
8 you for your deliberation under my instructions. Faithful  
9 performance by you of your duties is vital to the administration  
10 of justice.

11 One of the things that we are going to have  
12 someone discuss with you later on, if you wish to work on  
13 Saturdays, if you wish to work a half day on Saturdays, all day,  
14 none on Saturday, it's up to you. I understand that there is  
15 something coming up for one of you Saturday after next and we're  
16 going to make sure that you get to that and you're not stuck in  
17 the hotel room during the -- well, should I say, the event that  
18 you are required to go to.

19 For recess, well, I've got you here. You're at my  
20 beck and call, so I'm not going to bore you with that. I do want  
21 to let you know, though, that if you need a break and I don't  
22 give you one, please raise your hand. Let me know. I'll be  
23 happy to accommodate you. It's not a problem at all. Don't be  
24 embarrassed to wave at me.

25 Also, if you cannot hear a witness or an attorney,

1 or if you cannot see an exhibit that's being shown to you, raise  
2 your hand, let me know. I need to make sure that you can see and  
3 hear everything that is presented here in the courtroom for you  
4 to help you decide on this case.

5 Who's going to do the opening statement for the  
6 State?

7 MR. ESPARZA: I am, Your Honor.

8 THE COURT: I forgot, since this is kind of an  
9 unusual procedure, I forgot to have the attorneys stand up and  
10 reintroduce themselves to you.

11 Please do that. We'll start with the State.

12 MR. ESPARZA: I'm Jaime Esparza. I'm the district  
13 attorney. I'm representing the State of Texas.

14 MS. HUGHES: I'm Lori Hughes, also with the  
15 district attorney's office.

16 MS. MERAZ: Good morning. My name is Diana Meraz.

17 THE COURT: I would like the attorneys for the  
18 Defendant to please stand up and introduce yourself and your  
19 client.

20 MR. GANDARA: Good morning, Members of the Jury.  
21 My name is Jaime Gándara. I'm here to speak for David Rentería.

22 MS. PAYÁN: My name is Edy Payán, also co-counsel  
23 for David Rentería.

24 MR. VELÁSQUEZ: My name is Greg Velásquez. I also  
25 represent David Rentería.

1                   THE COURT: Have your client stand up, reintroduce  
2 him, as well.

3                   MR. GÁNDARA: This is my client, David Santiago  
4 Rentería.

5                   THE COURT: Thank you.

6                   All right. Proceed.

7                   MR. ESPARZA: May it please the Court.

8                   THE COURT: Yes. You may proceed.

9                   MR. ESPARZA: Counsel, Counsel for the Defense,  
10 Ladies and Gentlemen of the Jury. Good morning.

11                  MEMBERS OF JURY: Good morning.

12                  STATE'S OPENING STATEMENT

13                  MR. ESPARZA: I first want to thank you for your  
14 service. I know that you know how serious the charge is, what  
15 kind of case we're talking about, and the decisions that you're  
16 going to have to make. And so I want you to know that on behalf  
17 of the State of Texas I truly appreciate that you would accept  
18 your responsibility and sit on this Jury.

19                  This is the punishment phase of the trial. You  
20 will later learn, or you know by now that the Defendant has been  
21 found guilty and I'm talking to you a little bit about that. But  
22 at this stage of the trial I get to talk to you about what the  
23 evidence will show. So I'm not going to go into great detail,  
24 just kind of give you an idea of where we're headed and kind of  
25 where we're going so you'll know.

1                   Punishment. That's your job, to decide what is  
2 the appropriate punishment. I think the evidence will show that  
3 the best predictor of the future is the past. So during this  
4 part of the trial you'll see the State of Texas bring you  
5 evidence regarding the Defendant, about his past, so that you'll  
6 know a little more about him because, as you know, you must  
7 answer these questions, and that will be your charge. When the  
8 evidence is concluded, the Judge will give you the charge and you  
9 will have to answer these questions.

10                  So just to give you a little bit of an idea of the  
11 kind of evidence you'll hear is you'll hear that the Defendant  
12 graduated from Cathedral High School in 1988. That he attended  
13 UTEP, he attended the Community College. And then you'll hear  
14 about some of his criminal history. That he has two DWIs, that  
15 he had a third DWI, and you're going to hear that in 1992 he  
16 committed the act of indecency with a child by contact. And  
17 you're going to hear that in 1994 he pled guilty to that charge  
18 and received 10 years' deferred adjudication, which is a type of  
19 probation.

20                  After that probation, in '94, '95, he was twice  
21 convicted of DWI. In the year 2000 he picked up a third DWI. On  
22 that DWI his status changed from deferred adjudication, which the  
23 evidence will show is a type of probation, and that he went into  
24 what you'll hear that we call a shock probation. And what that  
25 means is he's still on probation, but for lack of a better

1 term -- it's just a common vocabulary for us -- he was sent to  
2 the penitentiary for 90 days. That's the shock part of the  
3 probation. He was sent in 2000 and then he was released in 2001,  
4 in January of 2001. You'll hear that when he came back he was  
5 placed on probation. You see, the shock part, if you do it  
6 again, you're going to go to the penitentiary, then you're on  
7 probation. He came back in 2001.

8 On November 18, 2001, is when he murdered and  
9 killed Alexandra Flores. That's the crime. It's that crime for  
10 which he's been convicted of. That's capital murder. It's  
11 capital murder because in this state when you kill someone under  
12 the age of six, that's a capital murder and the possibility of  
13 the death penalty. That's why the whole process of selecting you  
14 was so elaborate, because you will have to answer these  
15 questions.

16 Now, you might be wondering -- because of the  
17 uniqueness of this hearing that will last probably several days,  
18 the uniqueness of this hearing is that someone before you has  
19 found the Defendant guilty. And you might be wondering, well,  
20 will the evidence show the act that was committed? And the  
21 evidence will show that. We will present that to you.

22 We're going to present to you that on November 18,  
23 2001, the Sunday before Thanksgiving of that year, at a Wal-Mart  
24 which was very busy, the Defendant twice enters that store. He  
25 enters that store once through one door then through another

1 door. During that time Alexandra Flores, the deceased, she and  
2 her family are in that Wal-Mart.

3 The evidence is going to show that when he entered  
4 that Wal-Mart the first time he bought some merchandise and he  
5 went back to his van. And the evidence is going to show that  
6 the -- that at the van there was a security guard. And that the  
7 security guard remembers that it was that van because the van was  
8 running. The van had been left on. The engine was going. And  
9 the security guard was concerned. So the security guard took the  
10 plate number of the van.

11 The Defendant went into his van, dropped off his  
12 groceries, and went back into the store. When he went back to  
13 the store, he also waves and acknowledges the security guard.  
14 And the evidence will show that he said, "Don't tow my van, I've  
15 got to go back in." It's still running. And then in the time of  
16 about 129 seconds to 140 seconds, he enters that Wal-Mart. He  
17 goes in, he steps back, he pulls a cart, he walks in with an  
18 empty cart, 129 seconds to 140 seconds. In that period of time  
19 he goes into that store and he exits with Alexandra Flores.  
20 You'll see -- the evidence will show. You'll see that video.  
21 And you'll see that when he exits, he exits a safe distance in  
22 front of Alexandra, but Alexandra is following the Defendant.

23 The evidence is going to show that on the very  
24 next day, on November 19th, a Monday, 2001, her body is  
25 discovered. She's naked, she's cold, and she's alone, and the

1 evidence will show that we found her body. And you'll find out  
2 where we found it. The evidence is going to show that among all  
3 the things, the condition of the body, besides being naked, the  
4 body had been burnt.

5 But the evidence will show that there is -- that  
6 there was a plastic bag on her head and you'll hear that that  
7 plastic bag had a palm print on it. And you'll hear evidence  
8 that that palm print belongs to the Defendant. Palm print, plate  
9 number to the van. Defendant, you'll hear, was a sex --  
10 registered sex offender.

11 There won't be any question in your mind at the  
12 conclusion of this part of the trial that the Defendant is guilty  
13 of capital murder. You won't have to rely on someone else's  
14 decision. You'll know. You will know that the Defendant is  
15 guilty of capital murder.

16 The really hard part is you're going to have to  
17 answer these questions. It's not hard because there won't be  
18 evidence and it won't be hard because you don't know. It will be  
19 hard because the charge is so serious and the crime is so serious  
20 and the penalty is so serious, that will make it difficult. That  
21 will be your job.

22 When you get to answering the first question, the  
23 evidence will show that the answer is "yes." He is a future  
24 threat. And when you get to question 2, there will be no  
25 mitigating circumstances, none, in order to spare his life. I'm

1 not here to fool you or fancy talk you. This is a serious  
2 offense. Your duty is serious.

3 All I ask is that this phase, that you listen to  
4 the evidence, you observe the evidence, you watch how witnesses  
5 testify, and you'll come to the proper conclusion. You'll come  
6 to the conclusion that the answer to number 1 is "yes," and that  
7 the answer to number 2 is "no." And that the only appropriate  
8 sentence in this case, the only appropriate sentence, is the  
9 death sentence.

10 The punishment phase of a trial is always  
11 difficult because you have to decide what is appropriate. Your  
12 only guide is the evidence and the law. And I ask you to follow  
13 it. Thank you.

14 THE COURT: Mr. Gándara.

15 MR. GÁNDARA: Good morning, Members of the Jury.

16 MEMBERS OF JURY: Good morning.

17 DEFENSE'S OPENING STATEMENT

18 MR. GÁNDARA: You're going to hear, I anticipate  
19 the evidence will show, that David Santiago Rentería has been  
20 convicted by another jury, found guilty of committing a capital  
21 murder. He's been convicted of causing the death of a child  
22 under the age of six years old.

23 You're also going to hear evidence that David  
24 Santiago Rentería, at the age of five years old, began living at  
25 the Tigua reservation here in this town with his parents who were

1 at least older than average parents. You're going to hear that  
2 David went to grade school at Mt. Carmel Elementary School, that  
3 he was a very good student in grade school, that he practiced his  
4 religion very closely and very seriously. He was an acolyte, an  
5 altar boy, for the Catholic Church. You're going to hear that  
6 he --

7 (Cell phone ringing.)

8 THE COURT: All cell phones off in this courtroom.

9 MR. GÁNDARA: You'll hear that he won himself a  
10 trip to Rome to an audience with the Pope when he was a young  
11 man, about 11 years old.

12 You'll hear that there was some turmoil in his  
13 household as he grew up. You'll hear some details about that.  
14 You'll hear that he had to be protective of his younger sister as  
15 a child. David went to high school at Cathedral and was a very  
16 good student there, a very well-behaved person, very --  
17 throughout his life he's been a very mild-mannered person, not  
18 aggressive, not violent. He had a very good high school career.  
19 And things were going well for him up to that point in his life  
20 with the exception of some of the turmoil in his home.

21 He held a job after high school for three years  
22 with United States Customs Service. And then after that, for  
23 another three years, he held on to a job with the Life Management  
24 Center here in El Paso. And that brought him to about the age of  
25 24 years old, around which time he began drinking heavily.

1                   He had drank before socially. He had enjoyed  
2 dancing. He was a dancer. He did folkloric dancing along with  
3 his sister and some other of his friends, and he liked to do line  
4 dancing and was a dance instructor at a nightclub here in town  
5 and would drink socially. But around the time he turned 24, the  
6 drinking got to be very, very heavy. It changed radically. His  
7 sister will tell you that the man she had seen as a hero  
8 throughout her life as a child and as a grown man all of a sudden  
9 changed, something began to unravel.

10                  Well, he began to drink heavily and he pleaded  
11 guilty to this touching incident with a child and went on  
12 probation. And things continued to unravel. His drinking got  
13 worse, to the point where it got him in some more trouble with  
14 the law and he went to the penitentiary for it. He came out of  
15 the penitentiary and a few months later he became involved in the  
16 incident on the basis of which he's been found guilty of capital  
17 murder.

18                  The evidence will show you that Alexandra Flores  
19 was found dead with a plastic bag over her head with -- her head  
20 was burned and her midsection was burned. And the evidence is  
21 going to show you some video from Wal-Mart of somebody in a white  
22 cap going in the store and somebody in a white cap going out of  
23 the store. And you're not going to be able to distinguish the  
24 features, and nobody is going to be able to tell you that that  
25 figure is David Rentería. You'll hear evidence that somebody

1 other than David Rentería was in control of the van out in the  
2 parking lot and had contact with the security guard out there.

3                   And in short, David's been found guilty. That's  
4 what you've got to work with. He's been declared guilty of  
5 capital murder by another Jury. He went -- he was in jail for  
6 two years before the trial in which he was found guilty, and he's  
7 been in the penitentiary since then on death row. He's been no  
8 disciplinary problem to anybody at the county jail, no  
9 aggression, no violence, no behavior problems. He has been no  
10 disciplinary problem to anybody at the Texas Department of  
11 Criminal Justice. At TDC, at death row, no disciplinary  
12 problems, no aggressive behavior, no violence of any kind.

13                  He has been, even before, before his life started  
14 to unwind and even during, he was kind of a caretaker for his  
15 family. He was the head man. His parents were older and he had  
16 to do for them. At one point in his life when things began to  
17 unravel, he and the parents were kicked out of the Tigua  
18 reservation. There were a lot of politics going on there, and in  
19 addition, there he was, already on probation at that time, and in  
20 addition having to attempt to meet his weekly payments he had to  
21 pay on probation, to provide for himself, to help -- to try to  
22 provide for his parents. His parents ended up without a home and  
23 he ended up without a home. Still, he remained constant in  
24 trying to help his parents and help them live their lives.

25                  He was raising, in essence, as a father his niece.

1 His sister became pregnant when she was very young, had a baby.  
2 That baby stayed home with Santiago Rentería, David's father, and  
3 Eva Rentería, and David was a father to that child, and has  
4 continued to be.

5 Even in prison he's continued to provide advice to  
6 his family when they have problems, to counsel them, and to be as  
7 productive as he can be and as brotherly as he can be to his  
8 family while he's in prison. And so you're going to hear that  
9 and more about David Rentería so that you know who it is that the  
10 prosecutors are going to ask you to put to death. So that you  
11 can, before you decide to put him to death, if that's what you  
12 ultimately decide, you know who you're going to kill.

13 But the bottom line is this. What the law  
14 provides in Texas is that the punishment for capital murder is  
15 life in prison unless the Jury finds, by considering evidence  
16 about these two questions, that it's necessary to put him to  
17 death, that there's some need, something that says we've got to  
18 put him to death. And I submit to you that you're going to hear  
19 that David Santiago Rentería is a human being, like all the rest  
20 of us, has gone through life, made some horrible mistakes, real  
21 bad ones, but that he's not a dangerous, violent, aggressive  
22 person. And he's not going to be dangerous under circumstances  
23 where -- under the circumstances he's going to be in. There's no  
24 way he's going to be dangerous to society anywhere, and you're  
25 going to find that his character before the unraveling, and even

1 since then, is that of a human being with saving grace.

2                   And so when you hear all the evidence in this  
3 case, you're going to know that it's not necessary to kill David  
4 Rentería. Just doesn't need to be done. You're going to hear  
5 evidence that he's going to be locked up for most of the days of  
6 the hours in his life in a six-by-ten cell. You'll hear all of  
7 those details about what life in prison is going to be about.  
8 And bottom line, there's no need to kill. Thank you.

9                   THE COURT: Call your first witness.

10                  MR. ESPARZA: Your Honor, the State calls Officer  
11 Lloyd Douglas. Douglas Lloyd, I'm sorry.

12                  THE COURT: Raise your right hand.

13                  (The witness was duly sworn by the Court.)

14                  THE COURT: Please be seated. Speak up loud and  
15 clear.

16                  Proceed.

17                  DOUGLAS LLOYD,

18 having been first duly sworn, testified as follows:

19                  DIRECT EXAMINATION

20                  BY MR. ESPARZA:

21                  Q. Would you state your name for the record.

22                  A. My name is Douglas Lloyd.

23                  Q. And how are you employed?

24                  A. By the El Paso Police Department.

25                  Q. And what is your job title there with the El Paso

1 Police Department?

2 A. I'm a latent print examiner.

3 Q. And how long have you been a latent print examiner?

4 A. 10 years now.

5 Q. And did you have other duties before that with the El  
6 Paso Police Department?

7 A. I was a police officer for 21 years up until 2006. I  
8 retired and then came back to work for the city.

9 Q. And your duties as a latent print examiner, what are  
10 they?

11 A. Basically, my duties are to examine all the latent  
12 print evidence that comes in from crime scenes. I evaluate that  
13 evidence to make sure that it's of value or no value. I then  
14 enter that information into our AFIS computer, our Automated  
15 Fingerprint Identification System, then I look for any comparison  
16 matches. And then at that time I distribute those between Bruce  
17 Orndorf and myself.

18 Q. And what is your training and educational background  
19 that allow you to be a latent print examiner for the City of El  
20 Paso?

21 A. I have over 320 hours of training in latent print exam  
22 work. I've been doing it for 10 years.

23 Q. So on a daily basis you make comparisons of prints?

24 A. Yes.

25 Q. Let me show you what's been marked as State's Exhibit

1     1. And can you identify it?

2             A. This is a palm print card. This is what we take inked  
3 palm prints on for the department.

4             Q. And did you make these impressions or help assist in  
5 making those impressions?

6             A. I did.

7             Q. How do you know that?

8             A. It has my name and ID number and date on them.

9             Q. On what date were the impressions made?

10            A. 11/20 of '01.

11            Q. November 20, '01?

12            A. Yes.

13            Q. And who was the person -- do you need the card to tell  
14 me who was the person whose prints these belong to?

15            A. No.

16            Q. Who was the person?

17            A. This gentleman right here.

18            Q. What is his name?

19            A. Mr. Rentería.

20            Q. Well, on the card you have his first name, too, do you  
21 not? What is his name?

22            A. David Rentería.

23            Q. And you see him in the courtroom?

24            A. Yes, sir.

25            Q. Could you please just describe a piece of clothing for

1 me for the record?

2 A. Wearing a blue suit with a white shirt, gray-black tie.

3 MR. ESPARZA: Your Honor, may the record reflect  
4 the witness has identified the Defendant?

5 THE COURT: It will so reflect.

6 Q. This is State's Exhibit Number 1, is it not? This is  
7 State's 1 that I just showed you?

8 A. Yes.

9 THE COURT: Is the monitor on to your left there?  
10 It may be easier to see. Whichever one is easiest for you.

11 Q. Do you remember what time it was you took this print?

12 A. Not specifically. I know it was in late evening or  
13 early afternoon.

14 Q. Were you still at work when the print was made?

15 A. I had been called in to work, yes.

16 Q. They called you in?

17 A. Yes.

18 Q. Specifically to do this?

19 A. To do some comparisons, yes.

20 Q. And how is it that you came in contact with the  
21 Defendant?

22 A. I don't know if I can say it. We have his prints on  
23 file.

24 Q. Uh-huh.

25 A. And during my cursory look at the latent evidence that

1 had come in, I found that the one -- the palm print that we had  
2 on file for him was not of very good quality, so I had asked that  
3 he be brought in for additional prints.

4 Q. You probably see it on the monitor, but do you see that  
5 circle on the bottom part of what is the right palm?

6 A. Yes.

7 Q. Did you make that circle?

8 A. No, sir.

9 Q. Prior to taking his palm print, did you get permission  
10 to do that?

11 A. Yes.

12 Q. Let me show you what's been marked as State's Exhibit  
13 1A. And can you identify it for me, please?

14 A. This is a waiver that we usually give anybody that's  
15 coming in for -- to be fingerprinted or palm printed, and they  
16 sign it.

17 Q. And is it a fair and accurate depiction?

18 A. Yes.

19 MR. ESPARZA: Your Honor, at this time I'd offer  
20 State's 1A into evidence.

21 MR. GÁNDARA: No objection.

22 THE COURT: So admitted.

23 Q. (BY MR. ESPARZA) Before I put it on the screen, do you  
24 have -- is your signature on State's Exhibit 1A?

25 A. It is.

1 Q. Is the Defendant's signature on Exhibit 1A?

2 A. Yes.

3 Q. And this document is used why? For what purpose?

4 A. Just to take the fingerprints, showing that the --  
5 we're going to use your fingerprints for evaluation and  
6 comparison.

7 Q. I'm now showing you the back side of the card. And  
8 this, the back side of the card, shows what?

9 A. This is the left palm, and my name and initials -- or  
10 my name and ID number, the date.

11 Q. Did you take more prints than just the left palm and  
12 the right palm?

13 A. No.

14 Q. Just those two?

15 A. Yes.

16 MR. ESPARZA: I have no further questions, Your  
17 Honor.

18 MR. GÁNDARA: No questions.

19 THE COURT: You may step down.

20 (Witness leaves the stand.)

21 THE COURT: Call your next witness.

22 MR. ESPARZA: My next witness is Officer Tom  
23 Monday.

24 THE COURT: Raise your right hand.

25 (The witness was duly sworn by the Court.)

1                   THE COURT: You may be seated. Speak up loud and  
2 clear.

3                   THE WITNESS: Yes, ma'am.

4                   THE COURT: Proceed.

5                   TOM MONDAY,

6 having been first duly sworn, testified as follows:

7                   DIRECT EXAMINATION

8                   BY MR. ESPARZA:

9                   Q. Sir, would you state your name for the record.

10                  A. Officer Tom Monday.

11                  Q. And how are you employed?

12                  A. As a police officer for the City of El Paso.

13                  Q. And how long have you been with the City of El Paso?

14                  A. 19 years.

15                  THE COURT: Excuse me just a minute. Spell your  
16 last name, please, for the record.

17                  THE WITNESS: M-o-n-d-a-y.

18                  THE COURT: Let me ask the lawyers, when you have  
19 your witnesses up here, have them spell their last names.

20                  Q. (BY MR. ESPARZA) What are your duties currently?

21                  A. Currently I'm assigned to the Crime Scene Unit and  
22 latent print section.

23                  Q. And on November 19th, November 20th, that week, what  
24 were your duties?

25                  A. The same, attached to the Crime Scene Unit, sir.

1 Q. How long have you been with the El Paso Police  
2 Department?

3 A. 19 years now.

4 Q. And what is your training and background that allows  
5 you now to work in the department you work in?

6 A. For the last 15 years I've been assigned to the Crime  
7 Scene Unit. I've gained over 3,000 hours of specialized  
8 training. That training includes everything from forensic  
9 photography, latent print development, latent print comparisons,  
10 blood spatter analysis, shooting reconstructions, almost anything  
11 involved in the forensic side of evidence collection.

12 Q. I had you come in uniform. At my request you came in  
13 uniform, right?

14 A. Correct.

15 Q. That uniform looks different than what I see a patrol  
16 officer wearing.

17 A. Correct.

18 Q. What does that uniform designate?

19 MR. GÁNDARA: Objection, Your Honor. Relevance.

20 MR. ESPARZA: I'm just placing the witness, Your  
21 Honor. I won't be very long here.

22 THE COURT: Overruled.

23 THE WITNESS: As part of my duties it will -- I  
24 use a variety of chemicals. I'm having to do, basically, the  
25 grunt work. If I have to go up on a roof to process a scene,

1 that's where I have to go, so the uniform is a little different  
2 because we have a little different scope in the investigation  
3 part of it.

4 Q. (BY MR. ESPARZA) And on November 19, 2001, what was  
5 your assignment?

6 A. I was told to respond to an alley in the area of Oregon  
7 and Mesa, approximately 1900 northward, in reference to a  
8 recovered body.

9 Q. And is that area that you went to, 1200 North Oregon,  
10 is that in El Paso County, Texas?

11 A. Yes, sir, it is.

12 Q. And if you could, for the Ladies and Gentlemen of the  
13 Jury, when you got to 1200 Oregon, could you tell the Ladies and  
14 Gentlemen of the Jury what you saw?

15 A. Well, the body itself was away from plain sight and it  
16 was in an alley under a carport. So I did not observe the body,  
17 but I was briefed by the investigators that were already there  
18 advising what we already had, what they already knew. And I did  
19 not go in and view that body until they took care of the things  
20 that they had to take care of, so it was almost 11 o'clock before  
21 I viewed the body for the first time.

22 Q. How many officers make the criminalistics unit?

23 A. In total or at the scene?

24 Q. At the scene.

25 A. At this scene there were at least five.

1 Q. Why are there so many?

2 A. When we go to a major scene, everyone is given a  
3 different duty. You have someone doing photography, someone  
4 doing videotape, someone doing evidence collection, someone doing  
5 a diagram, and each of them have different duties at a particular  
6 scene to do.

7 Q. At this scene your duties are to do what?

8 A. I'd been requested to search for and recover any  
9 possible latent prints on or about this body.

10 Q. Why is it that you wait so long to view the body?

11 A. Because the other team members had not effected their  
12 part of the investigation. Videotape and the photographs were  
13 not complete yet. That all had to be done before we did any  
14 movement or did anything with the evidence or the body.

15 Q. At the crime scene is the crime scene divided up? Are  
16 there divisions, different zones in the crime scene?

17 A. Yes, sir.

18 Q. Could you tell the Ladies and Gentlemen of the Jury  
19 what are the different zones at a crime scene?

20 A. Sure. The interior, the most -- the closest to the  
21 body would be the red zone, and the only persons allowed in the  
22 red zone are the investigators who are actually doing their  
23 function, doing their part of it. We don't go into the red zone,  
24 basically, until it's my turn to do my job. That's when I enter  
25 the red zone.

1                    You have a yellow zone outside of that where the  
2 command post, for example, would be. The investigators would  
3 gather, share information.

4                    Then, of course, the green zone.

5                    Outside the green zone, the public and/or the  
6 media.

7                    Q. Why is the area so restricted?

8                    A. To protect the evidence.

9                    Q. That's what you do, you collect evidence?

10                  A. Yes, sir.

11                  Q. In this case you were collecting fingerprint evidence?

12                  A. That's what I was asked to look for, yes.

13                  Q. I'm now going to show you State's 3 and 4. Can you see  
14 State's 3 and 4?

15                  A. Yes, sir.

16                  Q. Are they fair and accurate depictions of what they're  
17 supposed to represent?

18                  A. Yes, sir, they are.

19                  Q. About what time was it when you were able to step into  
20 the red zone?

21                  A. Approximately 11 o'clock that morning.

22                  Q. When you step into the red zone, how close -- well,  
23 what do you see? Why don't you tell us what you saw?

24                  A. I got into the red zone. What I observed is the body,  
25 but it's covered with a sheet at this time. Obviously EMS had

1 covered the body with a sheet. There were -- the reason for  
2 that, there were apartments close by where people could have been  
3 looking out their windows and viewing, not even going outside,  
4 but just simply looking out their windows, so they had covered  
5 the body with a sheet, and that's the first thing I saw.

6 There's no other cars in this particular carport.  
7 There was a very strong odor of gasoline in the air. And that  
8 was my first observation, was the sheet.

9 Q. Where was the body?

10 A. Under the carport closer to the corner -- closer to  
11 the -- would have been the northwest corner of the carport.

12 Q. How long did you stay in the red zone?

13 A. We stayed in that red zone probably hour, hour and a  
14 half, approximately.

15 Q. And you stayed in the red zone for that length of time  
16 to do what?

17 A. Basically they were -- the only evidence I really had  
18 was the body itself. She was -- once I viewed the body, I  
19 noticed she was completely void of any clothing. The only thing  
20 on the body was a plastic bag over the head, which was melted or  
21 charred to her face. So since I'm the only one in the unit at  
22 the time that had any specialized training in recovering prints  
23 from skin, from human skin, that's why I was asked to do that --  
24 this particular -- on this particular case.

25 There were things that needed to be considered to

1 protect any potential evidence on her skin, and those things we  
2 went through one at a time. I made requests -- I even asked for  
3 an arson investigator to help us so we could collect potential  
4 gasoline or arson evidence in the way it needed to be collected.  
5 And I instructed the body transporters on how to move the body,  
6 how to cover the body, if you will, so that not to create any  
7 damage to any potential prints.

8 Q. At one point you had -- did you remove the sheet  
9 from -- that was covering the body?

10 A. We -- yes, we did. That original sheet that was on was  
11 collected as arson evidence and tagged accordingly.

12 Q. Let me show you State's Exhibit 4. And tell me if this  
13 is what her head and the upper part of her body looked like.

14 A. Yes, sir, it is.

15 Q. I'm not going to show you a picture of the lower half  
16 of her body at the moment, but when you viewed the body like  
17 this, at any time did you touch the body?

18 A. Eventually, yes, I did.

19 Q. When was that?

20 A. The first time I'm touching it was I placed paper bags  
21 over her hands to protect any evidence that she may have under  
22 her fingernails and in her hands.

23 Q. All right. And the next time you touched the body?

24 A. The next time I touched the body was we rolled her over  
25 slightly to collect samples of the asphalt and/or gasoline that's

1 underneath her back.

2 Q. At any time, including the -- what you see here or the  
3 lower half of her body, did you at any time at that point in the  
4 red zone examine the body for prints?

5 A. No.

6 Q. And why? If your job was to look for prints, why would  
7 you not do it there at that time?

8 A. To develop prints on skin, there's a particular process  
9 that has to be done to give you the best possible result, and  
10 that could not be accomplished in, one, in these weather  
11 conditions. It was windy. It was very cold.

12 And, two, there was a process that needed to be  
13 done, that we needed to do indoors, and at proper temperatures.

14 Q. Now, the print that you're looking for, what do you  
15 call that print?

16 A. Latent print.

17 Q. Why is it called a latent print?

18 A. Because it's unseen at this point. No one knows where  
19 it is.

20 Q. How is it that somebody like you is able to see a print  
21 that cannot be seen?

22 A. I don't particularly see the print. I have to go  
23 through the process, every step of the process, for the entire  
24 body and the bag that's on the head, and it's not seen until one  
25 is developed, if it is developed.

1       Q. After the arson investigators did their -- whatever  
2 they had to do to collect their evidence, what did you do?

3       A. Then I talked with the medical examiner and body  
4 transporters that were there, gave them specific directions on  
5 how I wanted the body transported. The main reason being the  
6 typical protocols, their standard operating procedure is to place  
7 the body inside a homicide bag, which is a plastic bag. I know  
8 that that plastic bag, in conjunction with the temperatures out  
9 there, could cause condensation, and that moisture and  
10 condensation would be detrimental to any prints that may be on  
11 the skin. So I asked them to transport her in a particular way.

12      Q. Okay. And what way did you ask them to transfer her?

13      A. As opposed to put her in a plastic bag, I asked that we  
14 simply put a sheet on the gurney, place her on the sheet, and  
15 place another sheet on top of her. And when they got to the  
16 morgue, I asked them not to put her in the cooler, to keep her  
17 out in a viewing room so that her skin temperature could warm up  
18 to where I needed it to be.

19      Q. Did you eventually go to the morgue?

20      A. Yes, sir, I did.

21      Q. And what time did you get there?

22      A. Approximately 1:00 p.m.

23      Q. And are you working by yourself or with anyone else?

24      A. No. There's other people working on -- Officer Vico  
25 Granillo is present, as is Officer Jiménez, who was the evidence

1 custodian for this particular case.

2 Q. Prior to the time that the body is transferred, when  
3 you touched the body, do you do anything for protection, to  
4 protect yourself or the scene?

5 A. Everyone there is wearing gloves. I asked the body  
6 transporters -- two of the biggest places to look for prints on  
7 skin, of course, would be the wrist, if someone was dragging a  
8 body, and/or the ankles, if someone was dragging by the ankles.  
9 So I asked that they not pick up the body from those particular  
10 points, but rather, underneath the shoulders and from underneath  
11 the knees, but everybody who handled it was wearing gloves at all  
12 times.

13 Q. Just so we're clear, normally they would have picked up  
14 the body from the ankles?

15 A. I'm not saying they would have picked it up that way,  
16 but I instructed them not, just in case they did. I did not want  
17 them to pick it up from the ankles or from the wrists.

18 Q. And did you see them comply to your instructions?

19 A. Yes. Yes.

20 Q. Did you, from -- after you left the red zone, did you  
21 immediately go to the medical examiner's office?

22 A. No, sir.

23 Q. Where did you go?

24 A. I went back to my office to gather some equipment that  
25 I knew I would need for the process.

1 Q. Is it -- could you tell the Ladies and Gentlemen of the  
2 Jury how difficult it is to collect just the print in general,  
3 not from skin, just in general?

4 A. Well, the most difficulty is, like we said before, it's  
5 a latent print. It's one we can't see. No one knows where it  
6 is, so basically I'm having to do a blind search for any latent  
7 prints. Now, we always search smart. For example, a burglary,  
8 we're searching the point of entry, point of exit, things that  
9 the subject obviously handled. But there are multitude of places  
10 that you can look for latent prints. This is a matter of  
11 searching that is rather meticulous, depending on the size or  
12 circumstances involved in the case.

13 Q. Well, what is the likelihood that if you touch  
14 something, that you'll leave a print?

15 A. The likelihood is very good. However, you have to  
16 have -- just touching something doesn't necessarily leave a  
17 print. You have to have some type of fingerprint residue on your  
18 fingers in order to leave that impression.

19 Q. What is that, that print residue?

20 A. Fingerprint residue is -- well, it's 98.5 percent  
21 water, which is sweat that comes through your pores, and the  
22 other parts of it are amino acids, lipid salts, and fatty oils.  
23 All of those things make up fingerprint residue. And I have  
24 specific powders and/or chemicals that will target not -- each  
25 individual part of that residue.

1       Q. And can you tell the Ladies and Gentlemen of the Jury  
2 how fragile a fingerprint is as it sits in an area?

3       A. It's fragile in the sense that if you wipe over it,  
4 it's gone. If -- any movement across it, any contamination of it  
5 could destroy it. If it's left alone and untouched, it could  
6 stay for years, literally, but if it's damaged in any way,  
7 handled over or smeared through, then it would be gone.

8       Q. Will any surface hold a print?

9       A. Not necessarily, no, sir.

10      Q. What are the dynamics? What type of surface do you  
11 need in order to hold a print?

12      A. Well, the best surface is always a nonporous surface;  
13 talking about glass, metals, most plastics, things like that.  
14 Clean, nonporous surfaces are the best surfaces for a print.  
15 Now, we can get prints off porous surfaces such as paper, wood,  
16 things like that, where the fingerprint residue actually leaches  
17 into that surface, and we use chemicals to bring the residue back  
18 out and stain, so those things could stay for years. But the  
19 best surface, the surface we use black powders on that you see  
20 everyone using black powder is non- -- clean, nonporous surfaces.

21      Q. State's Exhibit 3. What is that a photograph of?

22      A. This is the little girl's face, but you can see a  
23 little more clearly the plastic bag that's over her head and  
24 around her face. You can see that it's melted, actually, around  
25 her cheeks and her chin.

1 Q. And what are these bag things on both corners?

2 A. Those are the paper bags that I placed at the scene  
3 over her hands to protect any evidence that may be there.

4 Q. When this photograph is taken, do you know where the  
5 body is located? Can you tell?

6 A. Oh, where this photograph was taken?

7 Q. Uh-huh.

8 A. It's at the morgue, sir.

9 Q. At the medical examiner's office?

10 A. Yes.

11 Q. When you got to the medical examiner's office, did you  
12 speak with the medical examiner?

13 A. Yes, sir.

14 Q. And who is the medical examiner?

15 A. For this particular case it was Dr. Contín.

16 Q. And what was the purpose of speaking with the medical  
17 examiner?

18 A. The purpose of it, there were things that I needed to  
19 do to try to get prints, try to get evidence off of it. In the  
20 State of Texas the body basically belongs to the medical examiner  
21 so I have to get his permission to do anything that I want to do  
22 to that body.

23 Q. And did you make the request of the medical examiner?

24 A. Yes, sir, I did. I told him exactly what I wanted to  
25 do and he agreed.

1           Q.    Okay.  Would you tell us, please, what request did you  
2 make of the medical examiner?

3           A.    I explained to the medical examiner that I would be  
4 doing a chemical process to try to help recover latent prints  
5 from the skin parts of her body.  I told him what chemicals I  
6 would be using, what those chemicals would do, and he had no  
7 problem with me doing those.

8           Q.    As a result of your request, where was the body of --  
9 where was this body placed?

10          A.    In the viewing area.  In the back room of the medical  
11 examiner's office, but it was not in the cooler.

12          Q.    Why did you -- why was she back there and not in the  
13 cooler?

14          A.    Again, I needed the skin to get up to a particular  
15 temperature.  It was very cold that morning.  I needed her skin  
16 to be between 70 and 72 degrees to make the process of the  
17 skin -- for skin prints -- to give me the best optimal situation  
18 for getting prints off her skin.

19          Q.    How long did you wait for the temperature -- for her  
20 body temperature to rise?

21          A.    Well, I had not gotten there till almost 1 o'clock, and  
22 it was probably another hour before we began doing anything  
23 chemically to the body.

24          Q.    About how long did the body sit there at the medical  
25 examiner's office warming up?

1       A. Four or five hours.

2       Q. And how is it that you determined that the body  
3 temperature has reached an appropriate temperature?

4       A. I use an adhesive thermostat to place on her skin and  
5 to take a gauge of how the temperature of her skin is.

6       Q. It's not a thermometer?

7       A. No.

8       Q. Could you tell the Ladies and Gentlemen of the Jury how  
9 that works?

10      A. Basically, a thermometer would be telling the inner --  
11 her inside temperature. I'm looking for the surface temperature.  
12 So it basically -- what I'm using is simply the same type of  
13 thermostat you would use on an aquarium. It's adhesive. You  
14 stick it to the glass to get the temperature of the water. It's  
15 just a gauge to give me a good idea of when the skin is at  
16 optimal temperature.

17      Q. About what time did the body reach the temperature  
18 required?

19      A. It was closer to 2:00, 2:30.

20      Q. This -- at what point, when you are working with the  
21 body -- at one point -- I mean, you can naturally assume that at  
22 one point that person was living and had a surface temperature of  
23 something, whatever that is, right?

24      A. Yes.

25      Q. Then the body was out where you found it?

1           A. Yes, sir.

2           Q. For however long it was out there, so the body  
3 temperature has dropped, right?

4           A. Considerably, yes.

5           Q. Then you move the body to the medical examiner's office  
6 and you allow the body to now increase in temperature?

7           A. Correct.

8           Q. Well, just those fluctuations in temperature, is that  
9 enough to have a piece of evidence like a fingerprint, because  
10 they're so fragile, isn't that enough to destroy a print?

11           MR. GÁNDARA: Objection. Leading.

12           THE COURT: Sustained.

13           Q. (BY MR. ESPARZA) With the circumstances that I  
14 described to you, could you tell me what could happen to a  
15 fingerprint?

16           A. Under those circumstances and the conditions we had,  
17 those things did not cause any condensation to the skin. The  
18 room we had -- we kept her out of the cooler. We put her in a  
19 room that was not hot by any means. But it was normal  
20 temperature, about like this room here. But it wasn't causing  
21 any condensation that would destroy the prints. So those  
22 conditions that we set forth were not -- the least detrimental of  
23 any conditions possible.

24           Q. At what point did you remove the brown bags from her  
25 hands?

1       A. That would have been removed during the process to --  
2 when we started the process of trying to develop latent prints,  
3 we removed those bags. They're collected as evidence. If  
4 anything fell off inside the bags, the bags themselves are  
5 collected as evidence. So that would have been 2:00, 2:30.

6       Q. How difficult is it to retrieve a print from skin from  
7 a human person?

8       A. It is possible to do, not real probable. And I say  
9 possible because even the courses I take, they take us several  
10 steps for the process. But it's also known by the time we leave  
11 there, that class, that instruction, that -- at that time -- I  
12 took the course in 1998 -- it had only been done successfully 20  
13 times in the world.

14      Q. A print from skin?

15      A. A print from skin.

16      Q. So what you tell us now, what procedure did you use to  
17 attempt to locate any prints on the body?

18      A. The procedure I used was to expose her skin to  
19 cyanoacrylate; cyanoacrylate being the chemical name for  
20 superglue. So basically we built a -- erected a plastic tent  
21 over the -- right on the gurney where she was, over the gurney,  
22 put the superglue on a heater, and heated the superglue so --  
23 until it began to fume. Those fumes are made -- designed to  
24 adhere to any sweats or fatty oils that may be present on the  
25 surface that we're processing.

1 Q. So you have her body on a gurney?

2 A. Yes, sir.

3 Q. And then you put plastic over her?

4 A. Yes, sir.

5 Q. What kind of plastic? Can you see through it?

6 A. Yeah, it's a see-through plastic. It's very loose.

7 It's not draped to her body. It's built up. We have things to  
8 hold the -- the plastic does not touch the skin at all. It's  
9 just something to contain the fumes.

10 Q. And then you have -- is it more than one burner to  
11 create the fumes?

12 A. No. For this particular we only used one burner.

13 Q. Where did you place the burner inside the tent?

14 A. Inside the tent, best I recall, it was in between her  
15 legs, so that it was not touching her skin in any way.

16 Q. And how do you -- could you tell us the procedure you  
17 used in order to get the cyanoacrylate to fume?

18 A. Yes. The burner is turned up about four, five hundred  
19 degrees, and a small amount of superglue was placed inside a tin  
20 weight boat, and that weight boat is put on the burner at those  
21 temperatures. It only takes a few seconds for the glue to begin  
22 to fume, and we let it fume for anywhere from two to three  
23 minutes.

24 Q. How do you know how long to let it fume?

25 A. In most nonporous surfaces like glass or plastic -- I'm

1 sorry -- glass or metals, and sometimes plastic, you can see the  
2 glue beginning to take form on a print as you're watching it. On  
3 skin you really -- you can't see that. You can't see that, so I  
4 let it go two and a half, three minutes, just to be on the safe  
5 side. And that was -- for this particular process, that was a  
6 little long.

7 Q. Is it possible through using the cyanoacrylate fuming  
8 process that somehow you've altered or damaged or even make it  
9 not possible to view a print?

10 A. You could leave it on too long and overdo it, and  
11 eventually the superglue is going to -- it's starting to adhere  
12 to everything inside, inside the tent or inside the chamber,  
13 okay. If you leave it excessively, too long, it could go too  
14 far.

15 Q. Why do you use the cyanoacrylate versus some other  
16 chemical?

17 A. The cyanoacrylate gives us the basis. It will  
18 polymerize the prints to the surface that we're doing, and it  
19 allows us a multitude of methods after that's done. If we don't  
20 use the superglue first, we're limited to one thing or the other,  
21 and that's it. For example, a latent print, if I go and use  
22 black powder on a latent print off of a piece of glass, black  
23 powder, that's fine, I lift it. Well, now that print is gone  
24 because it's on my tape. Where if I superglue it first and then  
25 put the black powder on, the superglue, I can lift it and lift it

1 and lift it as many times as I want to. Or, if I'm not  
2 satisfied, I can still go on to other chemical means to try to  
3 develop it as long as I superglued it first.

4 Q. After the body had undergone the cyanoacrylate fuming  
5 process, what did you do?

6 A. Then we took down the tent, we removed the heater, and  
7 I began searching the body from head to toe with a specialized  
8 powder that is specifically designed for skin prints.

9 Q. Would the body be discolored if you do that?

10 A. Not on the skin, no.

11 Q. And did you know where you started on this person?

12 A. Best I recall, I started at the shoulders area.  
13 Obviously, the face was too badly damaged to see anything like  
14 that, plus it's covered with a bag. I started at the shoulders  
15 and worked my way down both sides.

16 Q. Could you just tell -- I'm sure most of us have not  
17 done that. What is the procedure? How much powder? What do you  
18 do?

19 A. The particular powder I was using was magnetic powder,  
20 so I'm using a magnetic wand. It's just a small amount of powder  
21 that sticks to the wand and as I go over it, I'm watching very  
22 carefully to see if it's developing any -- any prints on the  
23 skin.

24 Q. So you dust the body first?

25 A. Yes, after the superglue, then it's dusted first.

1 Q. With that magnetic powder?

2 A. Yes.

3 Q. What kind of tools are you using to illuminate the area  
4 that you're examining?

5 A. The only thing we had was normal room lighting plus  
6 flashlights. I'm using a flashlight in the other hand as I go.

7 Q. Is there any magnification?

8 A. No, sir.

9 Q. No magnifying glass, nothing like that?

10 A. No, sir. The only reason I would have used a magnifier  
11 is if I had actually come across something that I needed to see a  
12 little closer, but in this case, no.

13 Q. So you're going to be able to see the print with the  
14 naked eye?

15 A. Yes, sir.

16 Q. Did you examine the entire body?

17 A. Yes, sir, I did.

18 Q. And were you able to see any prints on her skin?

19 A. On her skin, no, sir.

20 Q. Were you -- at any time were you able to find a print  
21 or prints?

22 A. Yes, sir, I was.

23 Q. And where did you find the print?

24 A. During this process I observed a potential print being  
25 developed on the plastic bag that was on her head. That bag was

1 on her head when we did the superglue process. It was within the  
2 tank when we fumed the body. And that's where the print was  
3 being developed, was on the bag itself.

4 Q. I guess you found that print after you examined the  
5 skin?

6 A. During that time, yes, sir.

7 Q. Are you being assisted by anyone as you examine the  
8 body?

9 A. Officers Granillo and Jiménez are right there with me,  
10 yes, sir.

11 Q. Who's actually searching for the print?

12 A. I am.

13 Q. Only you?

14 A. Yes.

15 Q. How long does it take you to go over the body, head to  
16 toe?

17 A. Another 30 minutes.

18 Q. Once you find the print, do you look for others, or was  
19 that the only one you found?

20 A. The one on the bag was barely visible. The condition  
21 of the bag was very poor. It was wrinkled, it was melted in some  
22 parts, so we didn't move the bag. I just knew I'd seen areas  
23 where I thought a potential print was being developed and I just  
24 kept my eye on it, but I didn't move the bag at that time because  
25 we're not in the autopsy room yet. We're still in the viewing

1 room, and Dr. Contín is not even present yet.

2 Q. What do you do after the fuming process has been  
3 completed and you have -- and you believe you have a print? What  
4 do you do then?

5 A. Once we're done, we advise Dr. Contín. He moves the  
6 body into the autopsy room at that point. We point out to him  
7 the potential latent print on the plastic bag, and myself and  
8 Officer Granillo carefully remove that bag from her head.

9 Q. I'm going to show you State's Exhibit 3 again.

10 MR. ESPARZA: Could I have just a moment, Your  
11 Honor? I just misplaced something.

12 THE COURT: Yes.

13 MR. ESPARZA: I found it.

14 Q. I know you can see State's 3 -- I'm sorry -- State's 4  
15 from the monitor, but could you indicate to the Jury the plastic  
16 bag that we're talking about?

17 A. Yes, sir. The plastic bag, you can see it well in this  
18 area, but also, it continues down the side of her face on both  
19 sides. On these sides it's actually melted to her skin, around  
20 her hair here. But this part up here is, if you will, untouched  
21 by the fire.

22 Q. When State's 4 -- when that photograph is taken, could  
23 you tell us, was that before or after the fuming process?

24 A. Best of my recollection this is before the fuming  
25 process because we had not removed the bags yet.

1 Q. And where was it that you saw what you believe could be  
2 a print?

3 A. In this area of the bag right at the top, at the crown  
4 of her head.

5 Q. And from the time that you see it, are you able to  
6 determine whether or not you believe it is a fingerprint or a  
7 palm print or do you know?

8 A. My first and gut reaction was that it was a palm print  
9 based on my experience in the overall size of the print I was  
10 seeing, and the ridge detail.

11 THE COURT: For the record, Counsel, you have  
12 State's Exhibit 3 up on the monitor?

13 MR. ESPARZA: That is correct, Your Honor.

14 THE COURT: Does the Jury need a short break?  
15 It's dark in here. Raise your hand if you need one.

16 MR. ESPARZA: Could they turn the lights back on,  
17 Your Honor, please.

18 Q. Let me show you what's been marked as State's Exhibit  
19 2A. Are you familiar with 2A?

20 A. Yes, sir, I am.

21 Q. And how are you familiar with 2A?

22 A. It bears my initials, my ID number, the case number,  
23 and it even states what's inside this particular box.

24 Q. And what is inside State's 2A?

25 A. The plastic bag that we removed from the girl's head.

1 Q. Would you take the contents of 2A out.

2 A. (Witness complies.)

3 Q. 2A. The contents of 2A is the plastic bag that we see  
4 on State's Exhibit 3?

5 A. That's correct.

6 MR. ESPARZA: Your Honor, just for the record, I'm  
7 not offering these items into evidence because they had been  
8 previously admitted, all the items that I'm not offering.

9 THE COURT: Counsel, approach.

10 (At the bench, on the record.)

11 THE COURT: I don't know how you all want to  
12 work it's already been admitted or not. I don't know how you all  
13 want to do this. I mean, they have been admitted before. I'm  
14 looking at my notes from the last one. I don't know if you want  
15 to admit them or just show them or just say it's admitted into  
16 evidence.

17 MR. GÁNDARA: My view of it is that the Jury --  
18 this Jury should not be given evidence that was admitted in the  
19 first trial without readmitting it this time because they don't  
20 have any frame of reference for it. They haven't heard the  
21 foundation, they haven't heard the relevance, and so whatever you  
22 consider has got to be admitted, and only what they got to see in  
23 this trial is what's admitted. That's my opinion.

24 MS. PAYÁN: For example, if there's something that  
25 we don't want this time that got them there the first time, an

1 official request for the evidence, they'll end up with stuff that  
2 we didn't go through this time. Just a simple motion, Your  
3 Honor, to keep track.

4 MR. GÁNDARA: It's a new trial on punishment.  
5 It's not on guilt-innocence.

6 MS. MERAZ: It's admitted.

7 THE COURT: Everything that was admitted in the  
8 last trial is admitted in this one because that conviction has  
9 not been vacated. However, I think that it is wisest for the  
10 Defense, as well as for the State, to offer it in this one. And  
11 I understand that there were objections made on both sides of  
12 evidence prior to, and you know, the evidence that was in the  
13 first trial is coming in in this one one way or the other. And I  
14 just don't know how you all want to handle it.

15 (Open court, Jury hearing.)

16 THE COURT: Let's let the Jury take a break  
17 because we're having trouble with the microphone here.

18 (Jury exits courtroom at 10:45 a.m.)

19 MR. GÁNDARA: For purposes of this situation, it's  
20 all right for him to go back to the back for the moment. We can  
21 do this without him. He needs a break.

22 THE COURT: You all may be seated.

23 All right. Well, we all need a break, too. He  
24 can wait till we finish this up.

25 All right. Now, we're talking about the admission

1 of the evidence. I have a list from the last trial of everything  
2 that was admitted into evidence, some over objections, some  
3 without objection. And this case has been tried and the  
4 conviction has been upheld. It has not been reversed. So all of  
5 the evidence that was admitted in that first trial in the  
6 guilt-innocence phase, whether it's for the State or for the  
7 Defense, is coming in in this case.

8 MS. HUGHES: Your Honor, in order to accommodate  
9 what I think the Court is requesting, which I think is a very  
10 good idea, if we could itemize with the Court to make sure that  
11 our list is correct of what was admitted during the guilt phase  
12 of trial in the first trial, and then reoffer that in front of  
13 the Jury, itemizing all of those so that it's clear that all of  
14 those exhibits are in evidence and up for consideration for this  
15 Jury. Would that be an acceptable way to approach?

16 MS. PAYÁN: I think we can save time. I have the  
17 list from Lisa from the clerk's office.

18 THE COURT: Okay. Well, I have the original list  
19 that I made. I think it's probably best if we do that. We do  
20 State, we do Defense. If you want to stand up and say, "Whatever  
21 objections we had before, we'd like to lodge again," and I'll  
22 say, "Fine, whatever rulings I made before stand now," and that  
23 way there's something in the record if you think that you're  
24 trying to keep an objection on the first trial alive on this  
25 second trial.

1                   MR. GÁNDARA: Your Honor, additionally, I would  
2 object to giving this Jury any piece of evidence that hasn't been  
3 proved up and been the basis of a laying of a foundation at this  
4 trial because they're going to go back there with a box of  
5 evidence that they don't hook up to a witness or to any point or  
6 to any relevant matter.

7                   THE COURT: Then whoever does that will have their  
8 case weakened by doing that, whether it be you or whether it be  
9 the State.

10                  MS. HUGHES: Yes, ma'am.

11                  THE COURT: However, I think that this Jury needs  
12 to understand what evidence they possibly may have to take back  
13 with them to the jury room in their deliberations.

14                  MS. HUGHES: Yes, ma'am. May I review my list  
15 with the Court to make sure that our list is accurate?

16                  THE COURT: All right. Let's take a break. We'll  
17 come back in.

18                  You can take him for his break.

19                  (Recess from 10:46 a.m. to 11:00 a.m.)

20                  (After recess, Defendant and Jury present.)

21                  THE COURT: You may continue.

22                  MR. ESPARZA: Your Honor, at this time I'd offer  
23 State's Exhibit 2A and its contents into evidence. I believe  
24 they've seen them.

25                  MR. GÁNDARA: No objection.

1                   THE COURT: So admitted.

2       Q. (BY MR. ESPARZA) I'm now handing you what I just  
3 removed from exhibit -- from State's Exhibit 2A. Can you tell  
4 me, what are you holding?

5       A. This is the plastic bag that was over the girl's head.

6       Q. Without showing you the photo, State's Exhibits 3 or 4,  
7 the bag that -- the item you're holding there looks somewhat  
8 different than what we see in the photographs.

9       A. Yes, sir.

10      Q. Why is that?

11      A. The difference is the chemical processing that I put  
12 this particular bag through.

13      Q. What was the condition of the contents of State's  
14 Exhibit 2A before you started treating it?

15      A. The outside edges are as they were then, burned and  
16 charred. These are the parts that were melted to her face. The  
17 part here inside the hoop was the clear part that you saw when it  
18 was still on her face. This is darker now because of the  
19 chemicals that I applied in order to enhance that print, or bring  
20 out that print.

21      Q. When you look at -- well, it's also on some sort of  
22 embroidery hoop?

23      A. Correct.

24      Q. Who did that and when was that done?

25      A. I did. Closer to the ending stages, once I knew

1 exactly the part of the bag that that print was going to be on, I  
2 wanted to isolate it for direct processing, plus I wanted to keep  
3 the wrinkles out of it because the wrinkles would obviously be  
4 detrimental to my examiner's process of looking at the print, so  
5 I placed it on this embroidery hoop in November of 2001 and it's  
6 still on that hoop today.

7 Q. And when you look at the contents of State's Exhibit  
8 2A, can you, with your -- with the naked eye, can you see the  
9 print?

10 A. Yes, sir. It's still there, approximately in this area  
11 right here.

12 MR. ESPARZA: Your Honor, could I have the witness  
13 step down so he could publish it to the Jury?

14 THE COURT: Yes. You may step down.

15 MR. ESPARZA: Just stand here.

16 I'm sorry, I didn't mean to talk so low.

17 Q. If you would stand here. We're going to go from right  
18 to left, but if you would, without touching the bag, would you  
19 point so that they could see where you believe the print is  
20 located?

21 A. Yes, sir. The print that is seen is in the approximate  
22 center of the hoop right here. If you look closely, or put a  
23 white background behind it, you can see it better, or with  
24 magnification.

25 Q. Would that help?

1           A. Yes, sir. But the ridges themselves are on the bag in  
2 the approximate center of that hoop. It's there. Right there.

3           THE COURT: Show it to the Defense attorney,  
4 please.

5           MR. ESPARZA: Certainly.

6           THE WITNESS: (Witness complies.)

7           Q. I'm now going to show you State's Exhibit Number 5.  
8 And can you identify State's Exhibit Number 5?

9           A. Yes, sir, I can.

10          Q. Does it fairly and accurately depict what it's supposed  
11 to represent?

12          A. Yes, sir.

13          MR. ESPARZA: Your Honor, after showing to Defense  
14 Counsel, I offer State's 5 into evidence.

15          MR. GÁNDARA: No objection.

16          THE COURT: So admitted.

17          Q. (BY MR. ESPARZA) What is State's 5, Officer?

18          A. State's 5 is a photograph in the beginning stages, one  
19 of the first photographs I did of the bag after we realized there  
20 was a print present on it.

21          Q. Did I leave you with the little laser?

22          A. Yes, sir.

23          Q. Can you show me where the print is located?

24          A. Yes, sir. You can see the ridges of the print  
25 beginning to form in this area here. At this stage, only thing

1 that's been done to the bag now is superglue, so the ridges are  
2 white.

3 Q. Now, I assume we're talking this area here where my  
4 left hand is?

5 A. Yes, sir.

6 Q. And there are little rows, lines, it looks like? I  
7 guess you call them ridges?

8 A. Yes, sir.

9 Q. When you go -- when you do the fuming process, will the  
10 fuming process change the print? In other words, will it move a  
11 line? Will it look different to me?

12 A. No, it does not alter the print.

13 Q. How can the fuming process hurt the print?

14 A. If you go too far, the -- and again, it's important to  
15 understand that here all we've done is superglue, so the ridges  
16 are white. The superglue has adhered to the fatty oils or sweat  
17 that's present on the bag, and they're white. The furrows, or in  
18 between each ridge, you'll notice it's still black. If you  
19 continue to go too far with the superglue process, you'll begin  
20 to fill in these furrows and before you know it, the whole thing  
21 is white. And you won't be able to distinguish ridges from  
22 furrows.

23 Q. Now, State's Exhibit 5, what is the difference between  
24 State's 5 and the contents of State's Exhibit 2A that I showed  
25 you?

1           A. One thing in this process, I have not put the  
2 embroidery hoop on it, so that's why it's all -- it's still  
3 wrinkled, like it is. And this is the very first process that I  
4 put it through, the superglue. Nothing else has been done to it  
5 at this point. In the other -- on the bag itself several  
6 processes have already been done to it.

7           Q. Now I'm going to show you what's been marked as State's  
8 Exhibit 2B. And can you identify it?

9           A. Yes, sir, I can.

10          Q. And is it a fair and accurate depiction of what it's  
11 supposed to represent?

12          A. Yes, sir.

13           MR. ESPARZA: Your Honor, at this time I'd offer  
14 Exhibit 2B into evidence after showing to Defense Counsel.

15           MR. GÁNDARA: No objection.

16           THE COURT: So admitted.

17          Q. (BY MR. ESPARZA) Let me show you what I've marked as  
18 State's Exhibit 2B. Do you see it?

19          A. Yes, sir, I do.

20          Q. And what is 2B?

21          A. 2B is the same bag. It's now been through the  
22 superglue and other processes and it's also attached to the  
23 embroidery hoop at this time.

24          Q. The contents of 2A that you just showed the Jury, is  
25 that what we're looking at here?

1           A. Yes, sir, it is.

2           Q. Exactly like it is?

3           A. Exactly like it is.

4           Q. Why do we have this FBI marking right there?

5           A. We had taken this particular piece of evidence to the  
6 FBI for additional examination.

7           Q. And when was that done?

8           A. In December of 2001.

9           Q. And just so I'm clear, if you fume -- if the fuming  
10 process, if you overdo it, then that superglue is going to fill  
11 in the areas between the lines, right?

12          A. Correct.

13          Q. So then you just get a smooth surface?

14          A. Basically, yes, sir.

15          Q. When you got -- when you looked at State's Exhibit 2,  
16 the contents of 2A, this bag here, when you had State's 5 --  
17 well, first, let me ask you, where was this photograph?

18          A. In my office in the photo lab.

19          Q. And why did you photograph it? Why do we have State's  
20 Exhibit 5?

21          A. Because I want to photograph it in between each stage.  
22 I knew I was going to continue to another stage processing. But  
23 in case we did go too far or in case that bag deteriorated to the  
24 point where it began to tear or destroy itself, I wanted each  
25 stage photographed.

1       Q. Well, let me show you what comes from State's Exhibit  
2 2A, the contents of 2A. And why can't a comparison be made with  
3 prints just off of that embroidery hoop? Why can't you just do  
4 that? I mean, why photograph it?

5       A. Because you want to record those stages of the print,  
6 okay. One photograph may be better than the next. One set of  
7 photographs, one process, may improve the quality of this print a  
8 little more. And it may be there's a possibility that it's  
9 detrimental to it, so you've got to record each stage of it. The  
10 other stage is this bag is so fragile I didn't want anyone  
11 putting magnifiers or any undue handling to this particular bag.

12      Q. And is it acceptable to make comparisons using a  
13 photograph?

14      A. Absolutely.

15      Q. You take State's Exhibit 5, you put it in that  
16 embroidery hoop. Did you -- was it automatically tagged with  
17 that FBI tag?

18      A. No, that was done much later.

19      Q. So it doesn't have the FBI tag?

20      A. No, sir.

21      Q. All right. The first thing -- tell the Ladies and  
22 Gentlemen of the Jury what did you do once you put it in the  
23 embroidery hoop?

24      A. Once we did it in the embroidery hoop, I had shown it  
25 to my latent examiner. He asked if we could continue the

1 processing more and I did. The first thing I did was put it in  
2 another superglue tank, a controlled tank in the lab, and  
3 superglued it an additional time, for about 20 seconds. Then we  
4 went back and I tried fluorescent dye stains so that I could  
5 fluoresce the superglue and the dye stains and photograph it that  
6 way. That did not help. I went back and I tried black powders.

7 Q. What does that mean, try black powders?

8 A. Much like I did the surface of her skin, I went over  
9 the superglue areas with black powder and tried to make a lift of  
10 it so I could give him a lift of the print. And that was not  
11 successful. And that's why the photography was so critical,  
12 because it was the only way we were recording a quality image  
13 that he could use for comparison.

14 Q. So every step of the way you try something, then you  
15 photograph it?

16 A. Yes, sir.

17 Q. All of those different processes, can you tell us  
18 whether or not all those different processes altered the print in  
19 any way?

20 A. Alter it, no, sir.

21 Q. Why not? I mean, I thought you just testified earlier  
22 that a print is fragile?

23 A. It is fragile.

24 Q. Now, you put all sorts of things, without repeating  
25 them, you've done all sorts of things to this print. Why isn't

1 it altered?

2 A. We stopped at -- we kept it from being fragile by the  
3 superglue process. The superglue polymerizes that fingerprint  
4 residue to the surface. And as you can see, the print is still  
5 there to this day, some eight years later, because it's fixed on  
6 it. That's the purpose for doing the superglue in the first  
7 place. If I had not done the superglue up front, then we would  
8 never have gotten to two and three processes down the road.

9 Q. Who was your fingerprint examiner?

10 A. Bruce Orndorf.

11 Q. And how often do you believe you're going back and  
12 forth as to whether or not the print is in a condition that a  
13 comparison can be made?

14 A. Most every day over the next nine days. Nine, 10 days.

15 Q. And why does it take so long?

16 A. Some of the process -- for example, the fluorescent dye  
17 stain is a wet process. Once I did that, I had to put the bag  
18 away for the rest of the day and allow it to dry before I could  
19 continue to anything else. The final process I did to it, which  
20 is Sudan black, is also a wet process. It's rinsing -- I'm  
21 sorry -- applying the chemical and rinsing it off. It's a wet  
22 process. It has to completely dry before you go and do another  
23 set of photographs. It's also slowed down because I'm using my  
24 photo lab. There's only two photo lab techs in there that I have  
25 to have their permission, move them out of the way so I can do

1 the work in there. And plus we were being very careful taking  
2 our time in doing this print. We were not rushing it in any way.

3 Q. When was the print -- when was the embroidery hoop and  
4 the print, when did that go to the FBI?

5 A. First week of December.

6 Q. And who took it to the FBI?

7 A. I did.

8 Q. Was that done here locally at the FBI office?

9 A. No, sir. I took it to Washington, D.C.

10 Q. And was the print -- or the contents of 2A or 2A ever  
11 out of your possession?

12 A. No, sir, it was not.

13 Q. And why not?

14 A. I kept it in my possession to maintain care, control of  
15 it, and custody of that particular item.

16 Q. What was the purpose of taking it to the FBI?

17 A. We wanted to have them look at our findings. We wanted  
18 their opinion on our findings, and I also wanted -- I was curious  
19 to see if we could do some more photographs, which we did. The  
20 other exhibit that you showed me is their final photograph that  
21 we did using their camera, but again, I was present with the  
22 evidence during that time, as well.

23 Q. That was Exhibit 2B?

24 A. Yes, sir.

25 Q. And did they use a different camera than the camera you

1 used here in El Paso?

2 A. Same type camera. The only difference being was the  
3 lighting. They had better lighting. And the lighting actually  
4 made a big difference. Just like putting a white paper behind  
5 it, now you could see it better with the little bit of contrast.  
6 The lighting aids in the contrast of seeing that print.

7 Q. What I'm showing you here in State's Exhibit 2B, was  
8 that what was used to make a comparison?

9 A. The photograph of this, yes, sir.

10 MR. ESPARZA: I don't have any further questions,  
11 Your Honor.

12 THE COURT: Any cross-examination?

13 MR. GÁNDARA: Just briefly, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. GÁNDARA:

16 Q. Officer Monday, you did not locate any fingerprints on  
17 Alexandra Flores's body?

18 A. No, sir, I didn't.

19 Q. The business of the processes is complicated, as you  
20 said, and it's rare to locate prints on bodies?

21 A. Correct.

22 Q. Not because the process doesn't find them, just because  
23 they're not often there?

24 A. Right.

25 Q. So the fact that there's only 20 of them been found

1 doesn't mean that the process has failed every other time.  
2 They've looked. It's simply there have been no prints on the  
3 body that they use the process on?

4 A. None that they could recover.

5 Q. I may be repeating myself. No print from her skin, no  
6 fingerprints from her skin did you recover?

7 A. No, sir.

8 MR. GÁNDARA: Pass the witness.

9 THE COURT: Any more questions?

10 MR. ESPARZA: I don't have any further questions  
11 for this witness at this time, Your Honor.

12 THE COURT: You may be excused.

13 (Witness leaves the stand.)

14 THE COURT: Call your next witness.

15 So the attorneys know, even though I'm excusing  
16 witnesses from the courtroom, any time you need to recall them,  
17 we will find a way to get ahold of them and bring them back in  
18 for either of you.

19 MS. HUGHES: Thank you, Your Honor.

20 MR. ESPARZA: Prior to calling the next witness we  
21 were going to go through the list of exhibits that have been  
22 admitted.

23 THE COURT: All right. Go ahead.

24 MS. HUGHES: Your Honor, at this time the State  
25 would offer into evidence those exhibits that were previously

1 admitted during the guilt phase of the trial to include exhibits  
2 numbered 1, 2A, 2B, 3 through 31, 31A, 32, 32A --

3 THE COURT: Just a minute. Continue.

4 MS. HUGHES: 38, 39, 40 through 52, 54 through 72,  
5 75, 78, 80 through 86, 92, 93, 95, 101, 102, 104, 106.

6 MR. GÁNDARA: Your Honor, we renew the objections  
7 made to the introduction of that evidence previously.

8 THE COURT: Whatever ruling the Court made on the  
9 prior evidence at the guilt-innocence phase of the trial stands  
10 today. Those admitted -- those exhibits that she's enumerated  
11 here today are admitted.

12 Let me ask the State a question. There was an  
13 Exhibit 1A?

14 MR. ESPARZA: That's new, Your Honor.

15 THE COURT: Was there an offer made on that?

16 MR. ESPARZA: There was, Your Honor.

17 MS. HUGHES: It was admitted.

18 MR. GÁNDARA: I don't recall. 1A is what?

19 MR. ESPARZA: The consent.

20 MR. GÁNDARA: That's correct.

21 THE COURT: There's no objection?

22 MR. GÁNDARA: We did not object. No objection.

23 THE COURT: That also is admitted.

24 Call your next witness.

25 MR. ESPARZA: Your Honor, the State calls Bruce

1 Orndorf at this time.

2 THE COURT: Raise your right hand.

3 (The witness was duly sworn by the Court.)

4 THE COURT: Please be seated. Use the microphone.

5 Speak up loud and clear.

6 Proceed.

7 **BRUCE ORNDORF,**

8 having been first duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 BY MR. ESPARZA:

11 Q. Sir, would you please state your name for the record.

12 A. Bruce Orndorf.

13 Q. And how are you employed?

14 A. With the City of El Paso Police Department.

15 Q. And --

16 THE COURT: Spell your last name for the record.

17 MR. ESPARZA: I'm sorry, Your Honor.

18 THE WITNESS: O-r-n-d-o-r-f.

19 THE COURT: Proceed.

20 Q. And how long have you been working for the City of El  
21 Paso?

22 A. 37 years.

23 Q. What's your official title at the moment?

24 A. I'm the senior latent examiner in charge of the latent  
25 fingerprint section in the AFIS unit.

1 Q. And how -- and you work there at the El Paso Police  
2 Department?

3 A. Yes, sir.

4 Q. In all the time that you -- the 30-plus years with the  
5 City of El Paso, have at any time you worked with the El Paso  
6 Police Department as an officer?

7 A. Yeah. I was an officer for 10 years, and then a  
8 detective for 20 years, and now I've been a civilian for seven  
9 years.

10 Q. On November 19th of -- or that week of November 19th,  
11 2001, about the next two or three weeks -- were you working with  
12 the El Paso Police Department back in 2001?

13 A. Yes, sir.

14 Q. And at that time you were a detective?

15 A. No. At that time I was a civilian.

16 Q. And what is your area of specialty?

17 A. Fingerprints.

18 Q. And how long have you been involved in fingerprint  
19 work?

20 A. 27 years.

21 Q. And could you tell us what your training and -- well,  
22 let's first go over your training in order -- that qualifies you  
23 to be a fingerprint examiner.

24 A. Well, I've attended and completed both the basic  
25 fingerprint school and the advanced latent fingerprint school

1 conducted by the Department of Public Safety in Austin, Texas.  
2 Along with those I've attended and completed three advanced  
3 courses in fingerprint ridgeology studies. These were all  
4 conducted by the Federal Bureau of Investigation in Washington,  
5 D.C. I've tested and been certified by the international of  
6 identification -- International Association of Identification as  
7 a latent fingerprint examiner, qualified by the State of Texas as  
8 an official instructor in the field of ridgeology and fingerprint  
9 identification. Along with that I run the unit, compare prints.

10 Q. How many fingerprints comparisons do you think you've  
11 made in your career?

12 A. A whole bunch of hundreds of thousands. I mean, it  
13 could be a million prints as far as just fingerprint comparisons.

14 Q. Is the examination and comparison of a fingerprint  
15 similar to or different from the examination and identification  
16 comparison of a palm print?

17 A. They're both the same. The fingerprint and the -- the  
18 palm area of the hand is basically -- all of it's made up by the  
19 same, you know, ridgeology. It's just raised portions of skin.

20 Q. All right. Well, just so that we have an  
21 understanding, if I ask you a question regarding fingerprints,  
22 would that also apply to palm prints, or is there something  
23 different to a palm print that the Jury needs to know in regards  
24 to the examination, comparison, and identification of a palm  
25 print?

1       A.     Everything is identical, except you've got the palm  
2 area of the hand. You've got the fingerprints, but everything is  
3 the same as far as the technical aspect, as far as comparing a  
4 fingerprint or a palm print. I mean, I intertwine them. I could  
5 say fingerprint, but I mean fingerprint or palm print.

6       Q.     They're the same?

7       A.     They're the same, yes.

8       Q.     Ridgeology. Is that what you said you're --

9       A.     Yes, sir. It's just a study of --

10      Q.     What is ridgeology?

11      A.     It's just a study of ridges in the human body.

12      Q.     And have you been qualified as an expert in state  
13 courts to testify as a fingerprint expert?

14      A.     Yes, sir. I've been qualified in all the El Paso  
15 courts, the county courts, the district courts, along with the  
16 federal courts here in the western district, southern New Mexico,  
17 and in central Texas.

18      Q.     And how many times have you testified as a fingerprint  
19 expert?

20      A.     It would be in excess of 500, more, but I wouldn't know  
21 how many. But it's in excess of 500.

22      Q.     So when you say you've been qualified as an expert in  
23 the area of fingerprints, would it be fair to say that you have  
24 been qualified as an expert in the area of palm prints?

25      A.     Yes, sir.

1 Q. Have you ever found two people to have the same  
2 fingerprint?

3 A. No two fingerprints are the same.

4 Q. Have you ever found two people ever have the same palm  
5 prints?

6 A. No, sir.

7 Q. Have you ever heard, ever heard -- different than of  
8 you finding it -- two people having the same fingerprint?

9 A. No. Two people don't have the same fingerprints.

10 Q. Have you ever heard of two people having the same  
11 print?

12 A. No.

13 Q. Could you tell the Ladies and Gentlemen of the Jury  
14 what is a latent print?

15 A. A latent print?

16 Q. Yes, sir.

17 A. To explain a latent print, I've also got to explain an  
18 inked print.

19 Q. Okay. You want to do that one first?

20 A. I'd rather. It makes more sense.

21 Q. Okay. Tell the Ladies and Gentlemen of the Jury, what  
22 is an inked print?

23 A. Well, located on the palmar surfaces of the hands,  
24 which is the palm area, and also the fingers and the plantar  
25 surfaces of the feet, the human body has skin which is unlike

1 skin on other portions of the body. Instead of being smooth,  
2 this skin is rough and corrugated, consisting of raised portions  
3 of skin, or what we refer to as ridges.

4 Now, these ridges do not like enter on one side of  
5 the hand or one side of the finger and exit out the other side in  
6 straight lines. That's not what they'll do. What will happen is  
7 the ridges will enter different parts of the palm and the  
8 fingers. They'll -- the pattern types will be formed.

9 Basically we've got three pattern types; those  
10 being arches, loops, and whorls. You'll find one of those  
11 pattern types on the first joint of each finger. You'll also  
12 find those types of patterns in the interdigital area of the palm  
13 and the hyperthenia area. So along with these pattern types, the  
14 ridge flows, like I say, are not straight. Now, along with not  
15 being continuous, these ridges are not being straight. These  
16 ridges are not continuous.

17 What happens is you have these ridges, and what  
18 they'll be doing is they'll be flowing along, and all of a sudden  
19 they'll form a characteristic. By that I mean you may have a  
20 ridge that's flowing along and all of a sudden it will abruptly  
21 come to a stop, like you would at a dead end road. The ridge may  
22 flow along and then bifurcate into two ridges, which would  
23 basically be, you know, a fork in the road. Other  
24 characteristics will be we have all different lengths of ridges.  
25 A lot of them are considered to be dots or a small ridge. It

1 just may start and immediately stop. It's just a real short  
2 ridge. We have characteristics where a ridge may bifurcate, and  
3 then enclose and form what appears to be an island. You'll find  
4 these characteristics throughout the fingerprints.

5                   On one joint of each finger you'll find anywhere  
6 from 90 to 150 of the characteristics. In the palm area of the  
7 hand, upwards -- close to around 1500 of these characteristics.

8                   What we do to obtain a set of inked prints, I'll  
9 apply a thin layer of printer's ink, like you see on TV when we  
10 roll the prints, and then transfer that ink on to a susceptible  
11 surface, such as a fingerprint card. What that gives me now is a  
12 complete set of a person's known finger and palm prints to  
13 include, you know, the characteristics, the ridge flow, and the  
14 pattern types themselves. That is the basis behind a known or an  
15 inked print.

16                  Now, when we talk about latent prints, what  
17 happens on a latent print is on the tops or the summits of these  
18 ridges, the human body has tiny minute sweat pores that are  
19 constantly secreting body fluids or sweat, amino acids, things of  
20 that nature. What happens is that body fluid will sort of lay on  
21 the tops of those ridges. Then when you touch a surface, that  
22 body fluid or sweat is transferred onto that surface. Basically  
23 if there's an ending ridge, what you would be transferring would  
24 be that ending ridge, because you're only going to have the  
25 moisture on the raised portions of skin, which is the ridges.

1 You wouldn't have them in the furrows between the ridges. That  
2 right there, when that is laid on a surface that you would find,  
3 you know, any place that you're processing, that would be a  
4 latent print.

5 And then you also have a patent print, which is  
6 basically you have other substances that will adhere to the  
7 top or the summit of the ridges. Some could be oil from your  
8 forehead, it could be a foreign substance such as grease or  
9 blood. And what happens is that substance also gets on and stays  
10 on the tops or the summits of the ridges. And then when you  
11 touch a surface, that is transferred onto that surface. Then  
12 what we do is by the use of different powders, chemicals,  
13 alternate light sources, we develop these latent prints, bring  
14 them visible so we can see them, and then go ahead and either  
15 lift the print through -- by the use of lifting tape, or we'll  
16 photograph the print, and that way what we have is we have a  
17 lasting impression of somebody's fingerprint from that particular  
18 surface, fingerprint or palm print.

19 Q. An inked print, do we know who makes the inked print?

20 A. Yeah, the inked print or a known print is basically  
21 made by a person. You take their prints so you know that I've  
22 taken your prints, I know they're your prints.

23 Q. That would be in a controlled environment?

24 A. Yes, sir.

25 Q. Where like we see on TV, let's say somebody gets

1 arrested in jail or something, they just roll their prints,  
2 right?

3 A. That's what we do.

4 Q. All right.. So you just make the print?

5 A. You just make a set of prints.

6 Q. A latent print, you do not know who left that print?

7 A. No, sir.

8 Q. And would it be fair to say that the criminalistic  
9 guys, the crime scene guys, they're the ones who capture that  
10 latent print?

11 A. It's the crime scene unit's responsibility to locate  
12 and develop and bring those latent prints into our unit.

13 Q. And they do that based on the science and the variety  
14 of ways in order to make a latent print visible?

15 A. Yes, sir.

16 Q. Is it possible to take a latent print from a crime  
17 scene and match it with a known print to make a positive  
18 identification?

19 A. Yes, sir. That's what I do.

20 Q. State's Exhibit 1. It's already been admitted into  
21 evidence. What is State's Exhibit 1?

22 A. State's Exhibit 1 is a set of known or inked  
23 fingerprint and palm print impressions.

24 Q. And who made -- whose prints are on State's Exhibit 1?

25 A. Mr. Rentería's.

1 Q. And the print that you're looking at on that card, what  
2 type of prints are we seeing? What do you call that?

3 A. A palm print.

4 Q. Okay. A palm print?

5 A. Yes, sir. Right now I'm looking at the right palm  
6 print.

7 Q. Okay. If you turn it around, on the other side what  
8 would you see?

9 A. The left palm print.

10 Q. Of who?

11 A. David Rentería.

12 Q. Did you ever have an opportunity to see the contents of  
13 State's Exhibit 2A, which I'll now show you? The embroidery hoop  
14 would be the contents. Have you ever seen that before?

15 A. Yes, sir.

16 Q. And can I show you what's been marked as State's  
17 Exhibit 2B?

18 A. State's Exhibit 2B is a photographic image of State's  
19 Exhibit -- of what that is.

20 Q. I'm sorry. I didn't hear you at the end.

21 A. State's Exhibit 2B is a photographic image of that  
22 State's Exhibit.

23 Q. Okay. 2A?

24 A. 2A.

25 Q. Okay. So it is possible to take a latent print and

1 identify it with a known print?

2 A. Yes, sir.

3 Q. Is there a preferred method of making that comparison  
4 in your experience and background, off a photograph or off the  
5 original item?

6 A. Mostly I don't work off the original item. Normally I  
7 would work off of either a fingerprint card or a photograph.

8 Q. Back in 2001, do you remember working on the latent  
9 print that I showed you in 2A?

10 A. Yes, sir.

11 Q. And do you remember who you worked with in regards to  
12 the print that's contained in 2A?

13 A. Yes, sir.

14 Q. And who was that?

15 A. Well, it was basically myself and Officer Monday.

16 Q. And what were you all doing?

17 A. Well, Officer Monday was developing the print. I was  
18 comparing what he developed.

19 Q. Well, if you have the print, why does he need to  
20 develop it?

21 A. Had what print?

22 Q. You have the print. You have the print that's on  
23 State's Exhibit 2A, right?

24 A. Yes, sir.

25 Q. Why do you have to develop it if you have it?

1           A. Well, we have to develop it to bring out the  
2 characteristics and ridge detail located in the latent print.

3           Q. And is that development process -- are you altering the  
4 print in any way?

5           MS. PAYÁN: Your Honor, I'm going to object to  
6 relevance. This is not the witness who developed the print.

7           THE COURT: Overruled.

8           Q. (BY MR. ESPARZA) Are you altering the print in any  
9 way?

10          A. No. All you're doing is just developing the print. A  
11 lot of times when you have this moisture or contamination or  
12 whatever that is transferred from the fingers, a lot of it is  
13 real light. Some of it may be heavy, so the heavy part you may  
14 be able to develop right away. But then as you go from that  
15 point out, you may have to use different means or more processing  
16 to bring that ridge and those characteristics to develop them off  
17 the surface. I don't know whether I'm asking --

18          Q. Yeah. No, you're right. You're answering my question.  
19 So you're improving the quality of the print?

20          A. Yeah. The print's there. It's just a matter of  
21 bringing it so I can see it.

22          Q. So you're making it more clear?

23          A. You're making it more clearer and you're also expanding  
24 the -- basically the size of the print that you're developing.

25          Q. Did you make a comparison between what I showed you in

1 State's 1 and the latent print that is on 2B?

2 A. Yes, sir.

3 Q. Do you remember when you made that comparison and  
4 identification?

5 A. Not specific dates or times. It was the latter part of  
6 November and the first couple of days of December is when I was  
7 doing all this comparison work on this particular piece of  
8 evidence.

9 Q. And when you're doing your examination and comparisons,  
10 are you aware that at some point in the future you may be called  
11 to render an opinion?

12 A. Yes, sir.

13 Q. How many times have you been in court to render an  
14 opinion as to whether or not a latent print and a known print are  
15 either one and the same person or not the same person? How many  
16 times have you testified to those items?

17 A. Like I said, I've testified as an expert, you know,  
18 over 500 times. I mean -- and I've also testified for the  
19 defense that a print doesn't belong to a person.

20 MR. ESPARZA: Your Honor, at this time I'd offer  
21 the witness as an expert in fingerprint and palm comparison  
22 identification.

23 MS. PAYÁN: Your Honor, no objection.

24 THE COURT: Proceed.

25 Q. (BY MR. ESPARZA) When you make the comparisons that

1 you make -- now I'm just going to ask you specifically about this  
2 case -- do you do it with the naked eye or do you have some  
3 instrument in order to aid you in the comparison?

4 A. The only instruments that I use for the comparing of  
5 prints is a four-power -- basically a magnifying glass and a  
6 pointer.

7 Q. And is that what you used in this case?

8 A. Yes, sir.

9 Q. When you made the comparison from the known print  
10 that's in State's Exhibit 1 to the latent print that -- when you  
11 made those comparisons, did you do that before or after you went  
12 to the FBI?

13 A. Before.

14 Q. And when you made that comparison, were you able to  
15 render an opinion as to whether or not the latent print, the  
16 print that was found on the -- what's inside State's 2A, the  
17 plastic bag on 2A, whether or not that print belongs to the  
18 person on the known print, State's 1?

19 A. Yes, sir. I've already, you know, I'd already  
20 identified the print.

21 Q. And could you tell the Ladies and Gentlemen of the Jury  
22 whether or not the print that's on the plastic bag contained in  
23 2A is the one and the same person on State's 1?

24 A. Yes, sir, it is.

25 Q. How sure are you?

1           A. One hundred percent.

2           Q. So if State's 1 is the Defendant, David Rentería, did  
3 he make the print on the plastic bag, on 2A?

4           A. David Rentería made the print on that plastic bag with  
5 his right palm print.

6           Q. If you had made the decision and were of the opinion  
7 that the print on 2A was of David Rentería, why did you go to the  
8 FBI?

9           A. I was following protocol.

10          Q. Would you tell the Ladies and Gentlemen what that  
11 means?

12          A. Well, protocol, basically most everybody in the  
13 fingerprint community follows it. It's basically comparison,  
14 evaluating prints, and the final stage is verification of your  
15 ID.

16          Q. And were they able to verify the ID?

17                 MS. PAYÁN: I'm going to object to hearsay.

18                 THE COURT: Sustained.

19          Q. Was the print verified?

20          A. Yes, sir.

21                 MS. PAYÁN: Objection. Hearsay.

22                 THE COURT: Sustained.

23                 MS. PAYÁN: Your Honor, I'd ask that the Jury be  
24 instructed.

25                 THE COURT: It's sustained. You know what I told

1 you before, you don't get to consider it.

2 Attorneys, I'd like to break a little early for  
3 lunch so that the Jury is not jammed up in line. It looks like  
4 you're going to continue to go and there's possible  
5 cross-examination, so we're going to take a lunch recess at this  
6 time.

7 It's very important. You are not allowed to  
8 discuss the case among yourselves or with anyone else. We'll see  
9 you back here, everyone to be absolutely for sure, ready to go by  
10 1 o'clock.

11 (Recess at 11:45 a.m.)

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1                           CERTIFICATE

2 THE STATE OF TEXAS                           )

3    )

4 COUNTY OF EL PASO                           )

5                           I, MARIA C. CHÁVEZ, Official Court Reporter in and  
6 for the 168th District Court of El Paso County, State of Texas,  
7 do hereby certify that the above and foregoing contains a true  
8 and correct transcription of all portions of evidence and other  
9 proceedings requested in writing by counsel for the parties to be  
10 included in this volume of the Reporter's Record in the  
11 above-styled and numbered cause, all of which occurred in open  
12 Court or in chambers and were reported by me.

13                           I further certify that this Reporter's Record of  
14 the proceedings truly and correctly reflects the exhibits, if  
15 any, offered by the respective parties.

16                           WITNESS MY OFFICIAL HAND this the 8<sup>th</sup> day  
17 of May, 2009.

18                           Maria C. Chavez  
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